United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

Original

76-7408

B

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-7408

G. T. FLAMMIA,

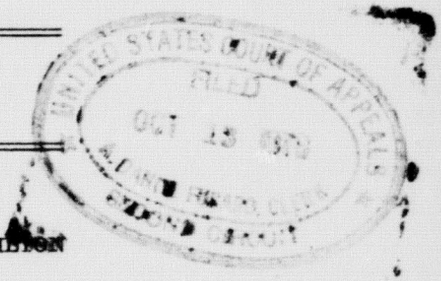
Plaintiff-Appellee,

—against—

O. S. G. TAP AND DIE, INC.,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of New York



JOINT APPENDIX

[Volume I—Pages 1A to 200A]

CLEARY, GOTTLIEB, STEEN & HAMILTON
One State Street Plaza
New York, New York 10004
(212) 344-0600
Attorneys for Defendant-Appellant
O. S. G. Tap and Die, Inc.

HANOPHY & LEDWITH
16 Rocklyn Avenue
Lynbrook, New York 11563
(516) 887-2889
Attorneys for Plaintiff-Appellee
G. T. Flammia

PAGINATION AS IN ORIGINAL COPY

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BEST COPY AVAILABLE

1A

73C 1571 G.T. FLAMMIA -v- MITE CORPORATION & ANO.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
10-19-73	Petition for removal filed. (Sup. Court/Nassau Cty)	1	JSS
10-19-73	Bond on removal filed.	2	
10-25-73	Stipulation dtd 10-23-73 extending time of deft MITE Corp to answer complaint to 11-19-73 filed.	3	
11-20-73	ANSWER filed	4	
3-12-74	Deft, Mite Corp.'s Interrogatories to pltff. filed.	5	
5/28/74	By PLATT,J.- Order dated 5/28/74 filed that the time for the pltff to answer the interrogatories is extended to June 17, 1974.	6	
6-14-74	Complaint filed. Summons issued.	7	
6-18-74	Pltff's answers to interrogatories filed.	8	
7-10-74	Request for Production of Documents filed.	9	
AMENDED 7/22/74	/ Summons retd and filed. Executed.	10	
7/26/74	Before Platt,J.-Case called & adj'd to 10/4/74 for status report		
8-13-74	ANSWER filed. (O.S.G. Tap & Die, Inc.)	11	
8-29-74	By PLATT, J.--Order dtd 8-22-74 extending time for deft MITE Corp to respond to pltff's interrogatories to 9-18-74 filed.	12	
9/20/74	Supplemental Answers to Interrogatories filed.	13	
9/20/74	Interrogatories of Pltff filed.	14	
10/2/74	By PLATT,J.- Order dated Sept. 30, 1974 filed that the time for the deft to answer the pltff's interrogatories is extended to Oct. 3, 1974	15	
10/4/74	Answers to Pltff's Interrogatories filed.	16	
10/17/74	Before PLATT,J.- Case called- Pre-trial held and concluded- Adjd to 1/31/75 to set a date for trial		
10/30/74	Interrogatories of pltff filed.	17	
10/30/74	Request for Production of Documents filed.	18	
11/26/74	Answer to Interrogatories filed.	19	
12-24-74	Notice to take deposition of G. F. Flammia filed.	20	
1/31/75	Amendment of defts Answers to Interrogatories filed.	21	
1/31/75	Before PLATT,J.- Case called- Adjd to 4/11/75		
2/26/75	Notice of Motion for Summary Judgment , ret. April 11, 1975 filed.	22	
2/26/75	Deft's statement purs. to Rule 9(g) filed.	23	
2/26/75	Memorandum of Law in Support of motion for summary jdgment of defts filed.	24	
2/26/75	Depositions of L. Brancato, R. Zoppedt and G. Flammia filed.	25-27	
XXXXXX	P.C. mailed to the attys. CONTINUED		

vs. MITE CORP, et ano

C[illegible] DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
4-9-75	Memorandum of law in opposition to pltff's motion for summary judgment filed.			
4-11-75	Before PLATT, J.-Case called. Deft's motion for summary judgment argued. Decision reserved.			28
10-6-75	By PLATT,J.-Opinion dtd 10-6-75denying defts' motion for summary judgment, and granting pltff's motion for partial summary judgment as to defenses based on the Status of Frauds and Real Property Law. Pltff is granted leave to amend his complaint within 21 days etc filed. (mg)			29
10/31/75	Answer to Pltff's Amended Complaint filed.			30
12/5/75	Before PLATT,J.- Case called- Marked ready and passed.			
12-15-75	Before PLATT,J.-Case called. Trial ordered & begun. Trial held & cont'd to 12-16-75.			
12-16-75	Before PLATT, J. - Case called. Trial resumed. Deft's motion to dismiss. Decision reserved. Trial continued to 12-17-75.			
12-17-75	Before PLATT, J.-Case called. Trial resumed. Trial con'd to 1-23-76.			
1-19-76	Letter of James W. Lamberton to Judge Platt dtd 1-16-76 filed re: adjment of trial, with annexed affidavit of Robert R. Zoppelt.			(31)
2-6-76	Before PLATT,J.-Case called. Trial resumed. Trial cont'd to 2-13-76.			
2-27-76	Before PLATT,J.- Case called. Trial resumed. Trial held and cont'd to 4-16-76			
3-3-76	Sten, transcript dtd. 2-6-76 filed.			32
3-23-76	Stenographer's transcript dtd 2-27-76 filed.			33
4-16-76	Before PLATT, J. - Case called, trial resumed. Deft Mite Corp.'s motion to dismiss argued. Decision reserved. All papers on or before 4-23-76. Trial concluded. Decision reserved.			
4-21-76	Stenographer's transcript dtd 4-16-76 filed.			34
4-23-76	Defts proposed findings of fact with poet-trial memo filed.			35/36
5-20-76	By PLATT,J.- Order dtd. 5-19-76 of dismissal filed.			37
7-15-76	By PLATT,J-Memorandum & Order dtd 7-14-76 filed. The Court finds that on either quantum meruit theory the pltff is entitled to recover from OSG damages in the sum of $130,000 filed.The parties agree that pltff's complaint against MITE should be dismissed w/prejudice but w/o costs etc filed. Copies to all parties			38

D. C. 110

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS	
		PLAINTIFF	DEFENDANT		
7-16-76	Judgment that the pltff recover damages in the sum of $130,000 from O.S.G. Tap and Die, Inc., and that the complaint against deft Mite Corp., is dismissed with prejudice but without costs or disbursements filed.			39	
7-16-76	Sten, transcripts dtd. 12-15-75, 12-16-75 and 12-17-75 filed.			40/41/42	
8-16-76	Notice of appeal filed.with bond for undertaking on appeal.			43/44	

4A

C 196—Summons with Notice, Supreme Court. 8-71

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80 EXCHANGE P[illegible] AT BROADWA

Supreme Court of the State of New York
County of NASSAU

G.T. TLAMMIA

Plaintiff

against

NITE CORPORATION AND
O.S.G. TAP AND DIE, INC.,

Defendant

Index No.

Plaintiff designates
NASSAU
County as the place of trial

The basis of the venue is

Plaintiff's residence
in Nassau County

Summons

Plaintiff resides at
3999 Aiken Avenue
Seaford, N.Y. 11783

County of

To the above named Defendant

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, August 22, 1973

GAYLOR & HAMPTON

Attorney(s) for Plaintiff

Defendant's address: O.S.G. TAP AND DIE, INC.
398 W. Wrightwood, Elmhurst, Ill.

NITE CORPORATION
Shelter Rock Lane, Danbury, Conn.

Post Office Address
205 HEMPSTEAD AVENUE
LYNBROOK, N.Y. 11563
516-593-6500

516-593-6500

SUPREME COURT OF THE STATE OF
NEW YORK: COUNTY OF NASSAU

G. T. FLAMMIA, Plaintiff, -against- MITE CORPORATION and O.S.G. TAP AND DIE, INC., Defendants.	VERIFIED COMPLAINT

Plaintiff, by his attorneys, Messrs. GAYLOR & HAMPTON, complaining of defendants, alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, defendant MITE CORPORATION was a business corporation organized and existing under the laws of the State of Connecticut.

2. At all times hereinafter mentioned, defendant O.S.G. TAP AND DIE, INC., was a business corporation organized and existing under the laws of the State of Illinois.

3. During the period between May 14, 1973 and August 6, 1973, at the special interest and request of defendants, plaintiff introduced representatives of defendants to each other, and performed the services necessary to render the defendants ready, willing and able to effect the purchase by defendant O.S.G. TAP AND DIE, INC., of a controlling business interest in the Sossner Division of defendant MITE CORPORATION; which interest was in fact purchased on or about August 6, 1973 at a price of Two Million Dollars ($2,000,000.00).

4. The aforesaid transaction was governed by the law of the State of Illinois, which permits compensation for services of the type rendered by this plaintiff to these defendants, on the basis of implied contract and quantum meruit.

5. At the time when the aforesaid transaction was negotiated and consummated, there was in effect in the industries in question a custom and usage, well understood by plaintiff and defendants, to the effect that a person rendering services of the type and nature rendered by this plaintiff to these defendants, was entitled to compensation in an amount equal to ten percentum (10%) of the amount of the purchase price of the business interest in question.

6. Accordingly, this plaintiff is entitled to be compensated by these defendants, in the sum of $200,000.00 exclusive of interest.

AS AND FOR A SECOND CAUSE OF ACTION

7. Plaintiff repeats, reiterates and realleges the allegations of this complaint contained in the paragraphs hereof numbered "1" through "4", inclusive.

8. The services rendered to defendants by plaintiff as aforesaid, have a fair and reasonable value of $200,000.00.

WHEREFORE, plaintiff demands judgment of defendants in the principal sum of $200,000.00, together with interest and the costs and disbursements of this action.

GAYLOR & HAMPTON
ATTORNEYS FOR PLAINTIFF
205 HEMPSTEAD AVENUE
LYNBROOK, N.Y. 11563
516-593-6500

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

G. T. FLAMMIA, Plaintiff, -against- MITE CORPORATION AND O.S.G. TAP AND DIE, INC., Defendants.	73 Civ. PETITION FOR REMOVAL OF ACTION FROM STATE COURT

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

Your petitioner, MITE CORPORATION, a defendant named in the above-entitled action, by Robert J. Blinken, President, and by its attorneys, Cleary, Gottlieb, Steen & Hamilton, respectfully shows:

1. That the above-entitled action was commenced in the Supreme Court of the State of New York, County of Nassau, by the service of a summons and complaint upon MITE CORPORATION September 20, 1973, in its offices in Connecticut; that such service of process was complete on September 20, 1973; that this petition is being filed within thirty (30) days after the service and within thirty (30) days of receipt of such initial pleading, and is thus timely filed pursuant to Section 1446(b)

of Title 28 of the United States Code; that the time of your petitioner to serve an answer or otherwise move or plead with respect to said summons and complaint has not yet expired, since under Rule 320(a) and § 3012(c) of the New York Civil Practice Law and Rules your petitioner, as defendant, has thirty (30) days after service of the said complaint upon the Corporation or until October 23, 1973, to make such response.

2. Attached hereto is a copy of the said summons and complaint served upon your petitioner herein, as aforesaid. The said complaint contains two causes of action based upon an alleged breach of implied contract and an alleged failure to compensate quantum meruit. The prayer for relief contained in said complaint demands judgment against defendants in the amount of $200,000.00, exclusive of interest and costs.

3. Plaintiff, G. T. Flammia, is, upon information and belief, a resident and citizen of the State of New York, residing at 3999 Alken Avenue, Seaford, New York.

4. Petitioner, one defendant in the said action, is a citizen of the State of Delaware, since it is incorporated in Delaware and has its principal place of business in Connecticut.

5. O.S.G. TAP AND DIE, INC., the other defendant in said action, is, upon information and belief, a citizen of Illinois.

6. The controversy involved in the above action is one solely between the petitioner, who is a citizen of the State of Delaware, O.S.G. TAP AND DIE, INC., who, upon information and belief is a citizen of Illinois, and the plaintiff, who is, upon information and belief, a citizen and resident of the State of New York and the amount in controversy exceeds $10,000, exclusive of interest and costs.

7. The above described action, therefore, is one of which this Court has original jurisdiction under the provisions of Section 1332 of Title 28 of the United States Code, and is one which may be removed to this Court by petitioner, the defendant herein, pursuant to the provisions of Section 1441 of Title 28 of the United States Code.

8. Petitioner files herein and presents to this Court a bond with good and sufficient surety conditioned, as provided by Section 1446(d) of Title 28 of the United States Code, that it will pay all costs and disbursements incurred by reason of the removal proceedings herein brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, petitioner prays that the above action, now pending against it in the Supreme Court of the State of New York, County of Nassau, be removed therefrom to this Court.

Dated: New York, New York
October 19, 1973

MITE CORPORATION, Petitioner

By S/Robert J. Blinken
Robert J. Blinken, President

CLEARY, GOTTLIEB, STEEN & HAMILTON

By S/William L. Lynch
A Member of the Firm
Attorneys for Petitioner
Office and Post Office Address
One State Street Plaza
New York, New York 10004
(212) 344-0600

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

G. T. FLAMMIA, Plaintiff, -against- MITE CORPORATION AND O.S.G. TAP AND DIE, INC., Defendants.	73 Civ. 1571 (TCP) ANSWER

Defendant O.S.G. Tap and Die, Inc., by its attorneys, Cleary, Gottlieb, Steen & Hamilton, in answer to the plaintiff's complaint, alleges:

FIRST DEFENSE

1. On information and belief, denies the allegations of paragraph 1.

2. Admits the allegations of paragraph 2.

3. Admits that on or about August 6, 1973 defendant O.S.G. Tap and Die, Inc. purchased all of the issued and outstanding capital stock of Sossner Tap and Tool Corporation from defendant MITE Corporation for a total purchase price of $2,000,000, admits that at some time during the period from May 14, 1973 through August 6, 1973 plaintiff introduced representatives of defendants to each other, and denies each and every other allegation of paragraph 3.

4. Denies each and every allegation of paragraphs 4, 5, 6 and 8.

5. With respect to paragraph 7, repeats and realleges paragraphs 1 through 4, above.

SECOND DEFENSE

6. The complaint fails to state a claim against defendant O.S.G. Tap and Die, Inc. upon which relief can be granted.

THIRD DEFENSE

7. Plaintiff's claim is barred by the statute of frauds of the State of New York, New York General Obligations Law Section 5-701.

FOURTH DEFENSE

8. Plaintiff's claim is barred by the statute of frauds of the State of Illinois, 59 Ill. Rev. Stat. § 1 (1972).

FIFTH DEFENSE

9. Plaintiff's claim is barred by New York Real Property Law Section 442-d.

WHEREFORE, O.S.G. Tap and Die, Inc. requests that the complaint be dismissed and that defendant be awarded the costs and disbursements of this action.

Dated: New York, New York
August 9, 1974

CLEARY, GOTTLIEB, STEEN & HAMILTON

By S/James C. Blair
A Partner
Attorneys for Defendant
O.S.G. Tap and Die, Inc.
One State Street Plaza
New York, New York 10004
(212) 344-0600

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

G. T. FLAMMIA, Plaintiff. -against- MITE CORPORATION and O.S.G. TAP & DIE, INC., Defendants.	73 Civ. 1571 (TCP) NOTICE OF MOTION FOR SUMMARY JUDGMENT

TO: HANOPNY[sic] & LEDWITH
Attorneys for Plaintiff
16 Rocklyn Avenue
Lynbrook, New York 11563

PLEASE TAKE NOTICE that upon (1) the summons and complaint herein, (2) the answer of defendants MITE CORPORATION ("MITE") and O.S.G. TAP & DIE, INC. ("O.S.G."), (3) plaintiff's answers to defendants' interrogatories, (4) defendants' answers to plaintiff's interrogatories, (5) the depositions of G. T. Flammia (plaintiff), Robert R. Zoppelt (Pres. of O.S.G.) and Leo J. Brancato (Exec. Vice Pres. of MITE), (6) defendants' statement pursuant to Rule 9(g) of the United States District Court, and (7) all prior pleadings and proceedings had herein, the undersigned will move this Court, in Courtroom 7 of the United States District Court, Eastern District, at the Federal Courthouse, 26 Cadman Plaza, Brooklyn, New York, on April 11, 1975, at 11 o'clock in the forenoon thereof, or as soon there-

after as counsel may be heard, pursuant to Rule 56(e) of the Federal Rules of Civil Procedure, for an order awarding the defendants (a) summary judgment against the plaintiff dismissing the complaint herein, (b) the reasonable costs and disbursements of this action, and (c) such other and further relief as may be just and proper, on the ground that, as is set forth more fully in defendants' memorandum of law in support of their motion for summary judgment, plaintiff's claim is barred by the New York Statute of Frauds and that the defendants are entitled as a matter of law to judgment on the merits, there being no material undisputed issues of fact presented by the defense upon which this motion is based.

Dated: New York, New York
February 26, 1975

CLEARY, GOTTLIEB, STEEN & HAMILTON

By S/J. W. Lamberton
A Member of the Firm
Attorneys for Defendants
Office and P.O. Address
One State Street Plaza
New York, New York 10004
(212) 344-0600

James R. Mitchell
MASUDA, FUNAI, EIFERT & MITCHELL
134 North LaSalle Street
Chicago, Illinois 60602

Of counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

G. T. FLAMMIA,

Plaintiff,

-against-

MITE CORPORATION and
O.S.G. TAP & DIE, INC.,

Defendants.
----------x

73 Civ. 1571
(TCP)

NOTICE OF MOTION FOR SUMMARY JUDGMENT DISMISSING DEFENDANTS' DEFENSES NUMBERED THIRD, FOURTH & FIFTH

TO: CLEARY, GOTTLIEB, STEEN
& HAMILTON, ESQS.
Attorneys for Defendants
One State Street Plaza
New York, New York 10004

PLEASE TAKE NOTICE that upon (1) the summons and complaint herein, (2) the answer of defendants MITE CORPORATION ("MITE") and O.S.G. TAP & DIE, INC. ("O.S.G."), (3) plaintiff's answers to defendants' interrogatories, (5) the depositions of G. T. Flammia (plaintiff), Robert R. Zoppelt (Pres. of O.S.G.) and Leo J. Brancato (Exec. Vice Pres. of MITE), and (6) all prior pleadings and proceedings had herein, the undersigned will move this Court, in Courtroom 7 of the United States District Court, Eastern District, at the Federal Courthouse, 26 Cadman Plaza, Brooklyn, New York, on April 11, 1975 at 11 o'clock in the forenoon thereof, or as soon thereafter as counsel may be heard, pursuant to Rule 56(e) of the Federal Rules of Civil Procedure, for an order awarding the plaintiff summary judgment dismissing the defendants' defenses numbered

Third, Fourth and Fifth as set forth in defendants' answer, and (b) such other and further relief as may be just and proper, on the grounds that as is set forth more fully in plaintiff's memorandum of law in support of his motion for summary judgment, neither the Statute of Frauds of the State of New York nor the State of Illinois apply to plaintiff's claim nor does the New York Real Property Law, section 442-d, and that the plaintiff is entitled as a matter of law to judgment on the merits, there being no material disputed issues of fact presented upon which this motion is based.

Dated: Lynbrook, New York
March 24, 1975

HANOPHY & LEDWITH, P.C.

By S/
Peter K. Ledwith
A Member of the Firm
Attorneys for Plaintiff
Office & P. O. Address
16 Rocklyn Ave.
Lynbrook, N.Y. 11563
(516) 887-2889

18A

Mite Corporation
437 Madison Ave.
New York, N.Y. 10022

3/5/73

Att Mr. R.J. Blinken, President.

Dear Mr. Blinken

For the past several months I have been discussing my personal future and the future plans of the Sossner Tool Division with Mr. Swanson and Mr. Brancato.

Discussions relative to future motivation and security plans for me, were answered by "Status Quo."

On suggestion by Mr Brancato I have made a tentative offer to acquire the Sossner Division. This offer has been turned down.

Therefore, due to the inertia evident on both of the above propositions, I hereby tender my resignation as president and general manager of the Sossner Tool Division effective no later than March 31. 1973.

A. J. Tocci

Copy to L. J. Brancato Exec. Vice President

19A

COPY

March 9, 1973

Mr. Guerrino T. Flammia
3999 Alken Ave.
Seaford, New York 11788

Dear Gerry:

At the Directors' Meeting on March 8, the Board accepted with regrets your resignation as an officer of the Corporation effective March 31, 1973.

On behalf of the Board, I wish to note your over twenty years of continuous meritorious service to the Corporation. During this period, while serving as president and director of Sossner Tap & Tool Corporation, you rendered significant services contributing to the growth of the company.

In recognition of these accomplishments, the Board conveys its gratitude and appreciation.

By Order of the Board of Directors
Sossner Tap & Tool Corporation

s/ Marcel J. Lamy
Marcel J. Lamy
Secretary & Treasurer

May 17, 1973

Mito Corporation
Shelter Rock Lane
Danbury, Conn. 06810

Attention: Mr. Leo J. Brancato, Exec. V. P.

Dear Leo:

I sincerely believe that you should very seriously consider the possibilities of selling the Sosnor Division to OSG Tap and Die as per our phone conversations last Monday and Wednesday.

As you will recall from my forecast for fiscal 1974, the need for further capital investment in Sosnor is heavy and the return on investment will be low this year and the next few years.

During the last couple of months I have visited other cutting tool companies on job interviews and courtesy calls. Very few of those companies are making any money and those few are making the little that they do on large volume and related product mix.

I have notified OSG that you are mulling over the possibilities of entering into negotiations and that you will be getting in touch with me soon.

Very truly yours,

G. T. Flammia
3999 Alken Avenue
Seaford, New York
11783

516-785-2409 or 516-722-3895

21A

May 17, 197[illegible]

OSG Tap and Die, Inc.
398 West Wrightwood
Elmhurst, Illinois 60126

Attention: Mr. T. Osawa

Dear Mr. Osawa:

It was a real pleasure to meet and discuss with you and Mr. Zoppolt the possibilities of aquiring Sossner Tool Divion by OSG.

As you know, I spoke to Mr. Leo Brancato, Executive Vice President of Nito Corporation on Monday, May 14, and told him that I had lined up a possible buyer for the Sossner Division but didn't reveal your company identity.

On Wednesday, May 16th, I spoke to Mr. Brancato again and told him that your company (OSG) was the interested party, after my phone conversation with Mr. Zoppolt on Tuesday afternoon, wherein he authorized me to act in your company's behalf.

Mr. Brancato asked for a little time to mull over the offer to buy Sossner - at least this week-end, and said that he would get in touch with me. He did ask for your name and Mr. Zoppolt and I gave the names to him together with your address and telephone number. I imagine that he is going to draw a D & B on your company before he continues any possible negotiations.

I will keep in touch with Mr. Brancato and if I do not hear from him by Wednesday, May 23rd, I will phone him on Thursday, the 24th.

The more I think about the possibilities of the merger of OSG and Sossner, the more enthusiastic I get.

Very truly yours,

C. T. Flamain
3999 Alken Avenue
Seaford, New York
11783

PHONE: 312 833-6990

OSG TAP AND DIE, INC.

198 WEST WRIGHTWOOD • ELMHURST, ILLINOIS 60126

22A

May 24, 1973

Mr. G. T. Flammia
3999 Alken Avenue
Seaford, NY 11783

Dear Gerry:

Thank you for your letter of May 17. I look forward to hearing the results of your further discussions with Mr. Brancato.

A D&B report on OSG Tap and Die in the United States is not too meaningful. A meaningful report should be drawn on the OSG Company in Japan or a phone call to our New York bank. Our financial strength for the acquisition of the Sossner Tool Division more then meets any requirement. The financial strength would come from the Japanese company.

We agree with you and believe that the OSG acquisition of Sossner could be very meaningful. Through our Japan production capabilities, ability to furnish automatic thread and flute grinders, etc., we can turn around and solve the problems you have outlined in your proposal in quick order and make this division a major factor in the US tap market. We believe that we are the only ones capable of doing it because no one has the additional production capability to immediately meet the Sossner need.

Mr. Osawa, Terry's father, will be coming to the United States approximately two weeks from now. When he is here, it would be a good time for us to visit the Sossner facilities and meet with yourself and Mr. Brancato. Prior to his visit, it would be well that we had the balance sheet and operating statement for our study and analysis.

Spoke to Zoffoli 6/6/73
Received Pro Forma from Brancato
wrote to Zoffoli on 6/7/73

Thank you for making the contact at Sossner and we look forward to hearing the results of your discussion with him on May 23 or 24.

Sincerely yours,

OSG TAP AND DIE, INC.

Robert R. Zuppelt
Vice-President

RRZ:brb

(3)

24A

MITE corporation, shelter rock lane
danbury, conn. 06810 tel 203-743-7651

May 30, 1973

Mr. Robert Zoppelt
O.S.G. Tap & Die Company
504 West Wrightwood
Elmhurst Illinois 60126

Dear Mr. Zoppelt:

Pursuant to our telephone conversation I am enclosing balance sheet and profit and loss statement as of February 28, 1973 for Sossner Tap and Tool Corporation, a wholly owned subsidiary of MITE Corporation.

If we were to sell Sossner, our objective would require recovery of MITE's investment as reflected on the balance sheet at the time of sale. Looking at the February 28th balance sheet, we would expect the purchaser to pay the sum of a) advances from parent ($160,848) and b)stockholder equity ($1,906,230) or $2,067,078.

In view of your intimate knowledge of the tap industry, both here and abroad, I don't feel that you should require much commentary to supplement the financial information. I would add however that the unaudited statement for the first two months of the current fiscal period (as of April 30th 1973) show sales and other income of approximately $404,000 and pre-tax profit from operations of about 10%. The rate of incoming orders would support our outlook for a solid gain in sales and earnings for Sossner this year.

Please feel free to call me after you have studied the enclosed statement.

Very truly yours,

Leo J. Brancato
Executive Vice President

LJB/c
encl.

Sossner Tap and Tool Corporation
Balance Sheet (Pro-forma)
February 28, 1973

ASSETS	
Current	
Cash	$ 14,000
Accounts receivable	260,110
Inventories	360,172
Prepaid expenses	16,172
Total current assets	650,454
Property, plant and equipment, net	1,501,973
	$ 2,152,427
LIABILITIES	
Current	
Accounts payable	$ 35,462
Other liabilities	49,887
Total current liabilities	85,349
Advances from parent	160,848
Total liabilities	246,197
STOCKHOLDERS' EQUITY	
Common stock	100
Paid-in capital	1,521,787
Retained earnings	384,343
	1,906,230
	$ 2,152,427

Sossner Tap and Tool Corporation
Statement of Loss (Pro-forma)
Fiscal Year Ended February 28, 1973

Sales	$2,044,596
Cost of sales *	1,552,902
Gross profit	491,694
Selling, G & A exp.	462,637
Operating profit	29,057
Other expense	11,880
Income before special reserve	17,177
Reserve for slow-moving inventory	21,400
Loss for the year	$ 4,223

* (a) Includes depreciation charge of $142,724.

(b) Corporate charges of $20,152 have been excluded.

27A

3994

6/2/73

Dear Bob.

Rather than confusing the possible deal, I am putting off any final decision to start making trips or any type set up for the present.

I will come to Chicago any time you ask if you give me 2 to 3 days notice.

The correct address for next 3 to 4 months is

Box 320
Jamesport N.Y. 11947
Phone 516-722-3895

Mail addressed to other address will be promptly forwarded.

785-2409
516-

Regards
Jerry Glanzman

28A

June 4, 1973

Mr. Leo Brancato, Exec. V. P.
Mito Corporation
Shelter Rock Lane
Danbury, Conn. 06810

Dear Leo:

Mr. R. Zoppelt of O.S.G. notified me on Friday that he received a proforma balance sheet from you. I have a tentative appointment to see him this week or early next week.

As I told you during my first phone conversation a few weeks ago, the discussion re: the Sossner Tool Division, was sort of evolved and not specifically planned.

Now that you have actively decided to pursue the possibility of selling the division, it would appear that if a deal is consumated, that I will be entitled to a finder's fee.

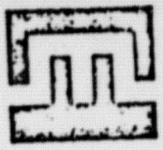
Your comments will be welcome.

Very truly yours,

G. T. Flammia

3999 Alken Avenue
Seaford, New York
11783

GTF:F3



MITE [illegible]

June 6, 1973

Mr. G. T. Flammia
P.O. Box 320
Jamesport New York 11947

Dear Mr. Flammia:

At no time have you been authorized to represent MITE Corporation in finding a buyer for Sossner.

Your letter of June 4th speculates that if a deal is consummated you may be entitled to a finder's fee. If there is any merit to your opinion you will have to look to the buyer and not the seller.

Very truly yours,

Leo J. Brancato
Executive Vice President

LJB/c

PX13 30A

MITE corporation, shelter rock lane
danbury, conn. 06810 tel 203-743-7651

June 13, 1973

Mr. Robert Zoppelt
OSG Tap & Die Company
504 West Wrightwood
Elmhurst Illinois 60126

Dear Mr. Zoppelt:

As further information concerning Sossner, I am providing the following:

a) Unaudited statement of income for two months ending April 30th 1973.

b) Budgetary expense report for month of April, 1973.

c) Schedule of Property, Plant, and Equipment as of February 28, 1973.

I enjoyed the brief visit with you and Terry on Tuesday, and I look forward with pleasure at our meeting again on Friday with Terry and his father.

Incidentally, I also enclose a note to Terry confirming that guest reservations have been made for his party of four at the Sherry Netherland for the evening June 19th.

Sincerely yours,

Leo J. Brancato
Executive Vice President

LJB/c
encls.

MITE corporation, shelter rock lane
danbury, conn. 06810 tel 203-743-7651

June 13, 1973

NOTE TO MR. TERRY OSAWA:

Reservations have been made for four persons on Tuesday June 19th, staying overnight through the 20th at the:

Sherry Netherland Hotel
781 5th Avenue (at 59th Street)
New York City, New York

The reservations are being held in your name with the understanding that your party will be guests of MITE Corp.

Leo

31 A

32A

SOSSNER TOOL DIVISION
(Unaudited)
STATEMENT OF INCOME
MONTH OF APRIL 1973

IPD SALES 23,423
COS 25,037
107

	MONTH	% OF SALES	YEAR TO DATE	% OF SALES	LAST YEAR TO DATE	% OF SALES
Net Sales	200628	1000	401879	1000	337028	100
Other Income	< 716 >		2325	6	3175	
TOTAL SALES & OTHER INCOME	199912	997	404204	1006	340173	100
Cash Discount on Sales	2559		4759	12	4124	1
NET	197353	984	399445	994	336049	99
Standard Cost of Sales	146737		297467	740	253804	75
GROSS PROFIT AT STANDARD	50616	252	101978	254	82245	25
VARIANCES:						
Purchase Price	697	3	2161	5	3209	
Direct Labor	1702	10	3167	8	3323	1
Ind. Mfg. Expense	< 19137 >	< 95 >	< 37910 >	< 94 >	< 29500 >	8
Prov. for Inv. Adj.	2500	12	4000	10	2000	
TOTAL	< 14040 >	< 70 >	< 30512 >	< 76 >	< 20973 >	< 6
GROSS PROFIT	64656	322	132583	330	103218	31
EXPENSES:						
Selling Expenses	27651	147	55155	131	45422	13
Administrative Expenses	13181	66	31611	77	27436	8
Prov. for R/P	2258	12	4458	11	3201	
Int. Exp. (Income) Net						
TOTAL	45240	225	91278	221	76059	23
PROFIT FROM OPERATIONS	19416	97	41305	109	27159	7
Corporate Charges	< 1667 >	< 8 >	—	—	—	
INCOME BEFORE TAXES	21083	105	43610	109	600	
State Income Taxes	1800	7	2000	7		
INCOME BEFORE FED. INC. TAXES	17283	98	41610	102	27159	7

Sossner Tap and Tool Corporation
Schedule of Property, Plant and Equipment
February 28, 1973

	Cost	Reserve	Net
Land	$ 119,000	-	$ 119,00
Buildings	726,365	$ 92,981	633,38
Mach. & Equip.	1,241,492	512,754	728,73
Furniture & Fixtures	45,041	24,190	20,85
Autos & Trucks	1,050	1,050	
	$2,132,948	$ 630,975	$1,501,97

34A

PX14

MEMO FROM

G. T. Flammia

DATE 6/13/73 TIME

TO K. Zapbell

(1) Base salary 36,000

(2) Car and expenses for same -
(a) includes getting rid of present car now owned by me

(3) Pension plan -- (Life insurance)

(4) Expenses - Travel and Entertainment etc.

(5) Special Account not over $100.00 a week to cover certain expenses allowing me more time for work

(6) Personal phone bills -

(7) Bonus based on Profit Suggested - See next page

35A

Page 2

MEMO FROM

C. T. Flammia

DATE 6/13/73 TIME

TO R. Zuhlke

50% of profit after taxes after int 5% for company -

Payable in stock in Company Andbrush - Proportion to be determined.

Profits to be calculated against Sales and Inventory increases or decreases

Depreciation straight line on useful life

3 year Agreement with 6 months notice of termination. At end of 2 years Agreement to be extended for 3 year periods with same

36A

Page 3

MEMO FROM

G. T. Flammia

DATE 6/13/73 TIME

TO R. Zoppelt

6 months notice.

Stock in Company to be valued at book value and must be sold back to company on termination of employment. Company must buy - I must sell.

Dividends are in proportion to stock ownership.

At age 65 option to continue as consultant at negotiable salary and cashing in of stock.

37A

MEMO FROM 4

G. T. Flammia

DATE 6/13/73 TIME

TO R. Zapbell

My statement that I will invest 150,000 in original purchase still stands -

Some sort of special arrangement to be made on terms of payment of this amount.

38A

"Letter of Intent

MITE corporation, 437 madison avenue, new york, new york 10022, 212-826-5016

June 27, 1973

OSG Tap and Die, Inc.
504 West Wrightwood Avenue
Elmhurst, Illinois 60126

Dear Sirs:

1. This letter of intent confirms our intention with respect to the purchase by OSG Tap and Die, Inc. ("OSG") and the sale by MITE Corporation ("MITE"), of all of the outstanding stock of Sossner Tap and Tool Corporation, a New York corporation ("SOSSNER").

2. Simultaneously with the signing of this letter of intent you are paying to us the sum of $100,000 in New York Clearing House funds, said sum to be considered a part of the purchase price to be paid by OSG for the stock of SOSSNER and to be refundable to OSG only in the event that failure to consummate the transaction contemplated by this letter shall be due to the refusal, failure or inability of MITE to proceed in accordance with this letter and the draft of the Agreement attached hereto.

3. Within 45 days of the date of this letter, MITE and OSG will enter into a Stock Purchase Agreement (the "Agreement") which will contain substantially the provisions of the draft of the Agreement attached hereto as Exhibit "A" and made a part hereof, with such changes or other and additional provisions as may be approved by MITE and OSG and their respective attorneys. Immediately hereafter and until the signing of such Agreement, MITE and SOSSNER shall afford to OSG and its representatives reasonable access to SOSSNER's plant and books and records.

4. Sums owed now or at the time of the signing of the Agreement by SOSSNER to MITE on account of advances for working capital from MITE to SOSSNER will not be repaid to MITE; likewise, any other obligations or liabilities of SOSSNER to MITE having arisen or accrued prior to the date of signing of the Agreement shall not be repaid or discharged by SOSSNER; any such debt, obligation or liability of SOSSNER to MITE will be extinguished, discharged and released by MITE

prior to the signing of the Agreement and the documents evidencing such extinguishment, release or discharge shall be satisfactory to MITE and OSG and their respective counsel.

Very truly yours,

MITE CORPORATION

BY: _____

Acknowledged and agreed to
this 27th day of June, 1973:

OSG TAP AND DIE, INC.

BY: _____

40A

AND DIE, INC.
198 WEST WRIGHTWOOD • ELMHURST, ILLINOIS 60126

July 2, 1973

Mr. Gerald Flammia
Box 320
James Port, New York 11947

Dear Jerry:

After extensive discussions with the present management team at Sossner Tool and Terry Osawa, we have been able to formulate an offer to you that we deem to be fair and very attractive.

The offer basically is as follows:

A. Salary - $30,000 per year

B. Automobile to be provided

C. Expenses relative to the position you will occupy

D. A share in the management profit sharing program

The position covered by the above would be vice-president in charge of manufacturing. You would be working directly for Warren Demery, who would carry the title either of executive vice-president or general manager.

Quite naturally, we would offer you a contract which would be compatible with the normal terms of this type of contract. The period of this contract, terms and conditions, responsibility, etc., we would like for you to work out with Warren Demery. The reason for this is that it is the unanimous opinion of all concerned that after your twenty five years as president of Sossner, you may find it difficult to work as a part of a management team. It is also our opinion that we all would like to have you work with us if you could be compatible with the management team. Your meeting with Mr. Demery should give us the answers to this.

It is my personal feeling that should you be able to fit into this program as we have it outlined, that a better and more lucrative position will become available.

I would like to have you give this letter your best consideration and confirm to us whether or not you accept our proposal. As you know, it will probably be August 1 to August 6 before we will be able to take over the operation of Sossner. In order for us to properly formulate our plans, we would like for you to give us your reply by July 10. We are tentatively arranging our next meeting at Sossner the 10th or 11th and want to formulate our final management decisions by then. I look forward to hearing from you.

Sincerely yours,

OSG TAP AND DIE, INC.

Robert R. Zoppelt
Vice-President

RRZ:brb

CC: T. Osawa
W. Demery

42A

July 13, 1973

Mr. G. T. Flammia
P. O. Box 320
Waterview Terrace
Jamesport, New York 11947

Dear Gerry:

In our telephone conversation this date, you stated you would not accept the position at Sossner as outlined in the letter sent you by CSG dated July 2, 1973 with the one year contract term as outlined by me.

While I regret your decision, I will take immediate steps to fill the position with another person. The urgency of an August 1 take-over by CSG makes this decision necessary.

Very truly yours,

Warren J. Demery
President

WJB:ih
cc: Mr. Terry T. Osawa

PHONE: 312 833-6990

OSG TAP AND DIE, INC.

898 WEST WRIGHTWOOD • ELMHURST, ILLINOIS 60126

43A

July 17, 1973

Mr. G. T. Flammia
PO Box 320
Waterview Terrace
Jamesport, NY 19947

Dear Gerry:

We received advice today from Warren Demery that you and he were unable to get together with regard to his employing you at the Sossner Tap and Tool, Inc.

The terms which you demanded were not compatible with that of our organization. It is, indeed, unfortunate that you could not fit yourself into our program.

We wish you the best in your future endeavors. Should we be able to be of any assistance, please advise.

Sincerely yours,

OSG TAP AND DIE, INC.

Robert R. Zoppelt
Vice-President

RRZ:brb

CC: Mr. Warren Demery

SECTION J REVIEW 44A PY 72-0

Review of fiscal 72-73 indicates that we will meet our forecast for shipments, but will fall short on our profit target.

Shipments will exceed forecast of 1,960,900.

We will not meet our forecasted profit for an expected and necessary price increase (see page 4 of last year's business forecast) did not materialize.

On October 31, 1972 we did adjust prices on standard taps an average of approximately 3% based on 1971 product mix. Since we will have had only 4 months at adjusted prices the effect on this year's sales is negligible.

Incoming orders continue to be at about monthly forecast levels.

It is anticipated that incoming orders will exceed 2,150,000 for the fiscal year against a forecast of approximately 1,960,900.

We increased volume to a substantial degree by selling taps to New York Twist Drill for their resale. Since October we have had a decrease in business from NYTD due to a change in our pricing policies to them. We still seem to be getting about 8 to 10 thousand a month incoming orders from NYTD. It is predicted that our sales to NYTD will keep declining for we will not and cannot meet competition at this time.

Inventory is at a very low level and recovery will be necessarily slow and arduous because pressure for delivery from our distributors keeps us from gaining any momentum on any items.

During the fiscal year we lost two experienced foremen - one man moved to the West Coast in September of 72 and the other went into business for himself as a beverage distributor in May of 72. We have replaced one foreman but have not replaced the other at this time.

We had a hard time getting shop help for a time, but the last few weeks have been much more successful.

During fiscal 72-73 we negotiated a three year contract with our Union Local 463, IUE-CIO.

The fact that we were negotiating a contract contributed greatly to the delay in starting a night shift and adding people prior to the contract expiration date of July 1, 1972.

We felt that adding more people and starting a night shift would make the Union a lot stronger in its demands.

Continued -

SECTION 1 - CONTINUED

We were further delayed after negotiations were completed because of the vacation period and the fact that our trained Leadman was on sick leave for over two months. The night shift was finally started on November 20, 1972.

CURRENT MAJOR PROBLEMS

1. Increase in profits
2. Price relief
3. Broader line of cutting tools
4. Automated equipment
5. Low inventory
6. Long deliveries
7. Study of methods of production to decrease costs
8. More supervisory staff
9. Rebuilding of some of our present equipment
10. Internal reporting of job records
11. Not producing by optimum methods
12. Too much overtime

SECTION 2 GOALS

1. Profits
2. Increase of inventory
3. Increase in productivity through automation
4. Improved cost control
5. Improved deliveries
6. Lines of related products
7. Utilization of present plant space
8. Reduction of overtime

SECTION 3 CONDITIONS

Conditions in our industry have improved greatly as far as demand is concerned.

Prices have stayed at very low levels.

Productivity has been improving in certain departments but old machinery and condition of the same, creates quality problems, which reduces some of the productivity gains.

SECTIONAL DEPARTMENTAL PLANS

SECTION 4A - MARKETING

Marketing report previously submitted outlining past performance and outlook for 73-74 fiscal.

Since the marketing report was submitted, there is every indication that a price increase will materialize in our industry. This price increase is expected to be about 3 to 6%.

Assuming that tap prices will increase 5% on standard taps and at least a corresponding increase on specials, our target of 2,057,000 is automatically increased to 2,159,000. The target of 2,159,000 actual sales is reasonable but we can not make the "profit from operations", goal of 160,000 outlined on GP-1 submitted by Corporation on 10/17/72 (copy attached to this section). We must increase our inventory of finished goods at the same time.

We have asked for an increase of 10% on all sales of standard STI taps to I.P.D. effective March 1, 1973. We are also requoting all specials to them as they come up.

Further on GP-1 the targets outlined include an annual figure of $250,000 to Helicoil Products at cost. Does this mean that we are not allowed to make a profit at the "Cost of Sales" level? Does "Cost" include at least the "G&A" percentage figure?

Even though we have asked for a 10% increase in selling price to Insert Products, we anticipate only a break even at "Cost of Sales" with our present equipment and methods. (See Manufacturing Section) We previously assumed that selling taps to the Products division at a break even point was good for the corporation as a whole. It seems now that this thinking has cost this division money and time better spent.

I believe that our sales methods are archaic as are the methods of the entire industry. Various ideas have and are being considered. Nothing much can be done about these ideas at this time due to our heavy backlog, delivery problems and price structure.

Our inventory of standard taps is very low and must be increased to help the Sales Department.

Our goal for inventory is a full 3 months supply of finished goods. At today's cost, the dollar figure in mind is approximately $350,000. (See Finance Section)

SECTION 4A - MARKETING - CONTINUED

Almost without exception, our competitors offer 1 to 2 days delivery on simple special taps made from stock type blanks. We have not geared ourselves to this type of service and it hurts us in the market place in many instances.

We have the necessary equipment, but lack the manpower at this time.

Consideration has been given to competing in this market. Start up costs would be comparatively high and real returns would not be felt for a year to 18 months. We have discussed this with corporate headquarters and were never encouraged or for that matter, really discouraged by headquarters. The idea remained "status quo".

SECTION 4B - ENGINEERING

We should have at least two people in this category. One man to supervise and keep improving production methods and updating standards.

The other man to be involved in product design and application. This same man could research and test our product here and should be technically and personally competent to work on problems in the field.

Capacity in the plant has been improved at cut off operation and heat treat operation. We have also added one used cylindrical grinder.

We started a program of rebuilding #33 Excello Thread Grinders in 1971. The intention was to rebuild at least three machines a year. The number of machines involved was 12. We rebuilt 3 and through some sought of oversight these rebuilds were capitalized in 1972-1973 fiscal year. We then were faced with a choice of starting with cut off, heat treat, etc., or thread grinders.

We put off the rebuild program in favor of the above. However, we requested rebuilds last fall for delivery in fiscal 73-74 and the request was denied even though, we have been promised at least 3 rebuilds each year. I have stressed the importance of rebuilding thread grinders over the past 6 years. All of the machines are over 20 years old.

We have purchased and received 2 used cut off machines - 2 new hardening and two new tempering furnaces - 1 used cylindrical grinder and one new automatic spiral point grinder. All of these machines are in full operation. Cut off machines are working two shifts.

As stated before in this report we delayed starting a night shift early in the fiscal year due to pending negotiations and other problems. It is expected that we will keep adding to our night shift and will be soon needing a foreman to cover this shift. We can use another day foreman also. Certain methods and scheduling have been altered to take advantage of the additional spiral point capacity. We should be able to show some good savings on costs in this operation.

More equipment is needed to continue to cut costs of various operations and to enable us to schedule and handle our increased volume efficiently.

Some of our present Hertlein equipment is in need of rebuilding certain parts. We anticipate that we will have to spend a total of approximately $10,000 on 4 machines on very necessary rebuilding of table slides and other wearing parts. Some of these Hertleins are over 6 years old and the grinding and steel grit generated raises havoc with slides after this length of time due to a lapping action.

SECTION 4D - INDUSTRIAL RELATIONS

We signed a new contract on July 1, 1972 which expires June 30, 1975.

We have very few grievances with the acception of oil mist problems but slowly we are eliminating the complaints by trying to improve the condition.

Since we are trying to minimize our overtime scheduling we are hiring people as rapidly as we can. Our average seems to be at a rate of 5-2. Hire 5 and keep 2.

We have a noise problem in the shop which is just under the maximum allowed. So far no complaints.

SECTION 4E - FINANCE

We anticipate a need for heavy capital expenditures and will list these expenditures on appropriate forms.

We are working on the installation of cost centers to better pinpoint any problem areas.

It is necessary to have someone with an Industrial Engineering background to work with our accountant and foremen to properly implement this program.

Final budget details will be submitted based on the original forecast of 2,057,000 sales plus an anticipated 5% increase in selling prices to 2,159,000. It is necessary to build up our finished goods inventory from our very low level of approximately 100,000 to 350,000 for a total of 2,409,000.

Using a total of 2,409,000 it is believed that a "profit from operations of 125,000 to 160,000 is entirely feasible.

The final budget details will bear this out.

SECTION 5 - CAPITALIZING PLANS

Acquisitions and product diversification. Sales of related products even though not manufactured by us should be considered and investigated.

55A

TO: Mr. G. T. Flammia

DATE: February 23,

FROM: T. Jacob

SUBJECT: PROJECTED STATEMENT OF OPERATIONS - FISCAL 1974

Attached is the projected statement of operations for fiscal year 1974.

Every effort has been made to forecast income and expenses for the coming year as correctly as possible.

The sales forecast of $2,057,000 has been increased to $2,159,000. This is based on a price increase of approximately 5% that will go into effect during the next fiscal year. In addition it is anticipated that our backlog will be decreased during the next fiscal year resulting in additional shipments.

T. Jacob

TJ:ih
Attachment
cc: Mr. R. Swanson
Mr. R. Scanlon
Mr. L. J. Brancato

PROJECTED STATEMENT OF OPERATION

FISCAL 1974

1. Projected Statement of Operations - Shipments
2. Projected Statement of Operations - Sales & Inventory Buildup
3. Indirect Manufacturing Expense
4. Selling Expense
5. Administrative Expense
6. Manpower Budget
7. Notes to Projected Statement of Operation

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATION - FISCAL 1974
SHIPMENTS

		AMOUNT	PERCENT
ALES:		$2,159,000	100.0
THER INCOME:		13,000	.6
OTAL SALES AND OTHER INCOME:		2,172,000	100.6
ASH DISCOUNTS ON SALES:		26,000	1.2
NET SALES:		2,146,000	99.4
OST OF SALES:			
DIRECT LABOR	373,000.		17.3
MATERIAL	173,250.		8.0
INDIRECT MANUFACTURING EXPENSE	907,200.		42.0
PROV. FOR INVENTORY ADJ.	18,000.		.8
TOTAL		1,471,450	68.1
ROSS PROFIT:		674,450	31.3
PENSES:			
SELLING EXPENSE	305,550.		14.2
*ADMINISTRATIVE EXPENSE	215,140		10.0
PROV. FOR RETIREMENT PLAN	25,000		1.1
TOTAL		545,690	25.3
OFIT FROM OPERATIONS		128,760	6.0
W YORK STATE INCOME TAX		8,100	.4
OFIT BEFORE FEDERAL TAX:		120,660	5.6

OES NOT INCLUDE CROUP MANAGEMENT EXPENSE

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATION - FISCAL 1974
SALES (SHIPMENTS) AND INVENTORY BUILD UP

	UNITS	AMOUNT	PERCENT
SALES AND INVENTORY BUILD UP:	1,250,000	$2,422,800	100.0
TOTAL COST OF PRODUCTION:			
DIRECT LABOR		444,000	18.3
MATERIAL		206,250	8.5
IND. MANUFACTURING EXPENSE		1,080,000	44.6
		1,715,000	71.4
GROSS PROFIT:		707,800	28.6
INVENTORY BUILDUP:			
INVENTORY VALUE	200,000	276,800	100.0
COST OF PRODUCTION:			
DIRECT LABOR($0.355 PER UNIT)		71,000	25.7
MATERIAL ($0.165 PER UNIT)		33,000	11.9
I.M.E. ($0.864 PER UNIT)		172,800	62.4
		276,800	100.0
SALES - (SHIPMENTS)			
SALES - NET	1,050,000	2,146,000	99.4
COST OF SALES:			
DIRECT LABOR		373,000	17.3
MATERIAL		173,250	8.0
I.M.E.		907,200	42.0
		1,453,450	67.3
GROSS PROFIT:		692,550	32.1

-les and inventory buildup consists of net sales (shipments) of $2,146,000 .ser cash discounts and other income and $276,800 of inventory buildup at stimated cost.

stimated cost of inventory buildup was arrived at by dividing direct labor,

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATION - FISCAL 1974
SALES (SHIPMENTS) AND INVENTORY BUILD UP

material and I.M.E. by 1,250,000 units which consists of 1,050,000 shipments and 200,000 inventory build up units.

Cost of sales for shipments was arrived at by reducing total cost of production by estimated cost of inventory build up.

BEST COPY AVAILABLE

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATIONS - FISCAL 1974
INDIRECT MANUFACTURING EXPENSE

	AMOUNT
MANUFACTURING OFFICE SALARIES	$23,460.
FOREMAN SALARIES	78,300.
ELEKTRALUBE SALARIES	16,500.
SHIPPING & RECEIVING SALARIES	32,700.
PACKAGING SALARIES	32,700.
INSPECTION SALARIES	52,650.
OTHER INDIRECT SALARIES	72,200.
MAINTENANCE SALARIES	48,500.
NON-PRODUCTIVE DIRECT LABOR	64,700.
INCENTIVE PAY - DIRECT LABOR	42,620.
PREMIUM PAY - DIRECT LABOR	32,700.
HOLIDAY PAY - DIRECT LABOR	26,500.
F.I.C.A. TAX	56,500.
UNEMPLOYMENT TAXES	11,300.
EMPLOYEE WELFARE	1,000.
PROVISION FOR VACATION - DIRECT LABOR	35,400.
SICK PAY - DIRECT LABOR	17,700.
TRAVEL & ENTERTAINMENT	240.
GROUP INSURANCE	54,540.
COMPENSATION INSURANCE	9,000.
MISCELLANEOUS INSURANCE	6,000.
HEAT, LIGHT, WATER & POWER	49,000.
PROTECTION SERVICE	5,000.
MISC. FREIGHT, P.P. & INSURANCE	21,600.
FACTORY ACCOUNTING SERVICE	2,000.
PROPERTY & OTHER TAXES	28,000.
DUES, SUBSCRIPTIONS & MISC.	240.
CONSULTING SERVICES	6,000.
EQUIPMENT RENTAL	1,200.
PACKAGING & SHIPPING SUPPLIES	16,000.
FACTORY SUPPLIES	18,500.
PERISHABLE TOOLING	41,000.
BUILDING MAINTENANCE SUPPLIES	12,000.
REPAIR & MAINT. MACHINERY & EQUIPMENT	33,000.
AUTO EXPENSE	1,000.
DEPRECIATION-BUILDING	18,000.
DEPRECIATION-FURNITURE & FIXTURES	1,000.
DEPRECIATION-MACHINERY & EQUIPMENT	125,000.
OUTSIDE PROCESSING & TEST	2,400.
TOTAL	$1,080,850.

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATION - FISCAL 1974
SELLING EXPENSE

	AMOUNT
SALES SALARIES	$ 54,000.
COMMISSIONS	198,000.
F.I.C.A. TAXES	2,400.
UNEMPLOYMENT TAXES	550.
PROVISION FOR VACATION PAY	2,400.
TRAVEL & ENTERTAINMENT	6,000.
GROUP INSURANCE	2,000.
COMPENSATION INSURANCE	400.
MISC. INSURANCE	300.
TELEPHONE & TELEGRAPH	12,000.
MISC. FREIGHT, P.P. & INSURANCE	-
ADVERTISING & SALES PROMOTION	15,000.
SAMPLES	3,600.
TRADE SHOWS	1,200.
MISCELLANEOUS	100.
CONSULTING SERVICES	-
AUTO EXPENSE - RENTAL	1,500.
BUILDING EXPENSE	5,500.
DEPRECIATION - FURNITURE & FIXTURES	600.
TOTAL	$305,550.

SOSSNER TOOL DIVISION
PROJECTED STATEMENT OF OPERATION - FISCAL 1974
ADMINISTRATIVE EXPENSE

	AMOUNT
ADMINISTRATIVE SALARIES	$115,000.
F.I.C.A. TAX	5,000.
UNEMPLOYMENT TAX	1,200.
EMPLOYEE WELFARE	2,000.
VACATIONS	5,700.
TRAVEL & ENTERTAINMENT	7,200.
GROUP INSURANCE	6,000.
COMPENSATION INSURANCE	500.
RECRUITING COST	2,500.
MISC. INSURANCE	500.
TELEPHONE AND TELEGRAPH	8,600.
CONTRIBUTIONS	300.
LEGAL SERVICE	1,000.
ACCOUNTING SERVICE	3,000.
FRANCHISE AND OTHER TAX	1,000.
DUES, SUBSCRIPTIONS & MISC.	3,000.
EQUIPMENT RENTAL	3,500.
STATIONARY & SUPPLIES	8,000.
REPAIR & MAINTENANCE-OFFICE MACHINERY	3,000.
AUTO EXPENSE	4,500.
BUILDING EXPENSE	12,000.
DEPRECIATION - FURNITURE & FIXTURES	5,700.
AMORTIZATION OF GOOD WILL	3,540.
DOUBTFULL ACCOUNTS EXPENSE	2,400.
*GROUP MANAGEMENT EXPENSE	-
RESEARCH & DEVELOPMENT EXPENSE	10,000.
TOTAL	$215,140

* PER MEMO FROM R. SCANLON DATED 1/11/73.

SOSSNER TOOL DIVISION
MANPOWER BUDGET
FISCAL 1974

	BUDGET 1973-DAY	ACTUAL DAY	@1/15/73 NIGHT	BUDGET DAY	1974 NIGHT
DIRECT					
No. 11-Lathe & Milling	9	9	1	9	2
No. 21-Heat Treat	2	1	-	2	
No. 51-O.D. Grinding	16	16	2	16	3
No. 61-Hertlein	7	4	2	5	2
No. 71-Thread Grinding	25	17	5	22	8
	59	47	10	54	15
INDIRECT (LEADMEN)					
No. 10-Lathe & Milling	1	1	-	1	
No. 50-O.D.	2	2	-	2	
No. 60-Hertlein	1	1	-	1	1
No. 70-Thread Grinding	2	1	1	1	1
	6	5	1	5	2
INDIRECT					
No. 20-ElektraLUBE	2	2	-	1	1
No. 30-Inspection	5	4	-	5	1
No. 40-Maintenance	5	4	-	5	
No. 80-Packing & Mark	4	4		4	
No. 90-Shipping & Rec.	2	2	-	2	
	18	16	-	17	2
General Foreman	1	1	-	1	
Quality Control Manager	1	1	-	1	
Foreman	3	2	-	3	1
Manufacturing Office	3	3	-	4	
Sales	4	4	-	4	
Administration	10	9	-	11	
TOTAL	105	88	11	100	20

NOTES TO PROJECTED STATEMENT OF OPERATION

1. SALES

Based on Forecast submitted by Mr. F. Watkins with a 5% increase per business report submitted 2/2/73 by Mr. G. T. Flammia.

2. OTHER INCOME

Shown is for mortgage on Lynbrook property.

3. COST OF SALES

As indicated on page 2 of 6, cost of sales was arrived at after cost of inventory build up was deducted from total cost of production. Provision for inventory adjustment was included since based on past experience a provision has been necessary. At this time, I anticipate no change in regard to inventory losses in Fiscal 1974.

4. VARIANCES

No allowances for variances has been made on this projected statement of operations. Variances as compared to standard cost of sales are anticipated as follows:

A. MATERIAL:

An increase is expected in the cost of steel during Fiscal 1974. Part of this increase may be offset by a change in our method of steel purchasing.

B. DIRECT LABOR:

Wage increases due to union employees July 1, 1973 and January 1, 1974 have been built into this projection. These increases have <u>not</u> been built into our unit standard costs that were established 8/1/72. Automatic variances will be generated due to this. I do not anticipate making any standard cost changes until machine standards have been revised.

C. INDIRECT MANUFACTURING EXPENSE:

An overhead rate of 325% is built into our standard unit cost at this time. The overhead rate in this projection is approximately 243%. This would result in a sizeable favorable variance.

5. MATERIAL:

Based on prior years experience and an analysis of anticipated sales.

6. DIRECT LABOR:

Based on 69 direct labor employees or an increase of twelve employees. It was anticipated that these new employees would be hired as soon as possible and they were built into the projection for the full year. Saturday work was not anticipated and a forty five hour week for both the day and night shift was used.

If all new employees can not be hired as soon as possible it may be necessary to work Saturday in some areas to maintain shipments projected. Direct labor projection was prepared in detail by employee. Employees at maximum rate at this time, were put in at maximum from 3/1/73 - 6/30/73; at maximum plus general increase and cost of living increase from 1/1/73 - 12/31/73 and at maximum plus general increase and cost of living increase from 1/1/74 - 2/28/74. Employees at minimum at this time were increased to maximum at 7/1/73. New employees were put in at trainee rate as of 3/1/73, at minimum @ 7/1/73 and maximum @ 1/1/74.

7. INDIRECT MANUFACTURING EXPENSE:

A. INDIRECT LABOR

An increase of six (6) people was included in projection as follows:

1. Night Shift Setup Man
2. Night Shift Foreman
3. Replacement for Day Shift Foreman
4. Replacement for Day Shift Inspector
5. Night Shift Inspector
6. Maintenance Man for Preventative Maintenance

B. Labor related expenses were based on current experience, plus any anticipated increases and the increase in personnel.

C. Expenses by cost center have not been included in this projection. They will, however, be given to Mr. Scanlon so that they can be included in the monthly income statement budget comparison. As previously indicated this comparison will be used for future improvements and should not be considered a firm budget for each cost center.

SALES EXPENSE

Sales expenses have been prepared as in the past with one exception. In the past general building expenses have been almost completely charged to manufacturing expense. In Fiscal a portion of these expenses will be allocated to selling expense.

ADMINISTRATIVE EXPENSE

A portion of general building expense will be allocated to administrative expense using the same method used in selling expenses.

One additional employee has been included in the Accounting Department. This employee will work closely with the Division Accountant and release him for more important duties.

An Industrial Engineer has been included in this projection for the full year.

Group management expense has not been included per memo from Mr. R. Scanlon dated 1/11/73.

FIVE - YEAR GOALS

2/21/73

	Actual Past Year	Forecast Current Year Ending '73	ANTICIPATED GOALS Ending '74 1st Year	Ending '75 2nd Year	Ending '76 3rd Year	Ending '77 4th Year	Ending '78 5th Year
s Volume Total	1,481,477	2,050,000	2,159,000	2,500,000	2,800,000	3,000,000	
centage of Change m Prior Year		36%	5.0	15.8	12	7.0	
74 rating Profit	(61,325)	30,000	125,000	250,000	320,000	400,000	
centage Operating fit to Sales Volume	(4)	1.7	5.8	10%	11.4	12.0	

CAPITAL EXPENDITURES ARE REQUIRED TO MEET THESE GOALS

FIVE - YEAR GOALS

October 17, 1972

SOSSNER TOOL

	Actual Past Year	Forecast Current Year Ending '73	ANTICIPATED GOALS				
			Ending '74 1st Year	Ending '75 2nd Year	Ending '76 3rd Year	Ending '77 4th Year	Ending '78 5th Year
les Volume Total	1,481,477	1,800,000	2,000,000*	2,200,000 *	2,500,000*	2,750,000*	
rcentage of Change om Prior Year		+ 21	+ 11	10	13.6	10	
perating Profit	(61,325)	25,000	160,000	220,000	250,000	325,000	
ercentage Operating rofit to Sales Volume	(4)	1.4	8	10	10	12	

* Includes $250,000 annual shipments to Heli-Coil Products at cost.

Division

NOTE: THIS PROGRAM WILL TAKE APPROXIMATELY 12 TO 18 MONTHS TO COMPLETE.

EXPANSION

ITEM	DESCRIPTION OF PROJECT	JUSTIFICATION	COST
SEMI-AUTOMATIC FLUTE GRINDER		CAPACITY AND COST REDUCTION	35,000
AUTOMATIC FLUTE GRINDER		CAPACITY AND COST REDUCTION	37,000
4 & 6 AUTOMATIC HEAD GRINDERS (3)		CAPACITY AND COST REDUCTION	130,000
AUTOMATIC REAMER GRINDER		CAPACITY AND COST REDUCTION	45,000
AUTOMATIC SPIRAL FLUTE GRINDER		CAPACITY AND COST REDUCTION	35,000
RELATED INSPECTION EQUIPMENT AND EXHAUST FOR ALL ABOVE		---------	10,000
		TOTAL	332,000

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REPLACEMENT

ITEM	DESCRIPTION OF PROJECT	JUSTIFICATION	COST
THREAD GRINDERS	REBUILD AND MODERNIZE	COST REDUCTION	180,000
SEMI-AUTOMATIC SPIRAL POINT GRINDER (2)		REPLACEMENT OF SOSSNER BLAKE	65,000
REBUILDING PRESENT HERTEL IN EQUIPMENT - SELECTIVE WEAR PARTS			20,000
		TOTAL	265,000

DISPOSITION

ITEM	DESCRIPTION OF PROJECT	MARKET	BOOK	P & L
VARIOUS MACHINES NOT IN USE OR WORN OUT. SOME MACHINES ALREADY DISPOSED OF - ALSO TO CORRECT ASSET INVENTORY				
			ESTIMATED ORIGINAL BOOK VALUE	125,000-
			TOTAL	125,000-

Division _____ Fiscal Year _____

DESCRIPTION OF PROJECT *	Project Expenditures	Estimated Annual Savings
SEE CAPITAL EXPENDITURE SHEET		
TOTAL		

* List in ority Order

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DOUBLER TOOL — Division — [illegible] — Fiscal Year

ERTISING & SALES PROMOTION		Estimated Expense
Space including Production	SOME ADVERTISING - NEW PRICE LISTS AND SALES	
Publicity	BULLETINS AND	
Trade Shows	TRADE SHOWS	
Sales Promotion & Literature		
	TOTAL	16,200

.POWER REQUIREMENTS	Present Employment	Employment Fiscal Year End
Salary		
Exempt	9	13
Non Exempt (HOURLY)	11	12
Hourly		
Direct	57	69
Indirect	22	26
TOTAL	99	120

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NTRIBUTIONS AND DONATIONS		Amount
Description and Cause		
	VARIOUS CHARITIES	
	TOTAL	$300.00

As of Feb ry 1

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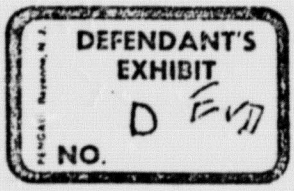

SOSSNER TAP AND TOOL CORPORATION

FINANCIAL STATEMENTS

NINE MONTHS ENDED NOVEMBER 30, 1974

GALE, TAKAHASHI & CHANNON
CERTIFIED PUBLIC ACCOUNTANTS
110 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60603

AREA CODE 312
782-1723

SEYMOUR L. GALE, C. P. A.
FRANK Y. TAKAHASHI, C. P. A.
MARVIN L. CHANNON, C. P. A. (1968-1973)
FRANK T. OKITA, C. P. A.
CHARLES A. GELMAN, C. P. A.
ALLEN D. SERED, C. P. A.
RALPH FUJIMOTO, C. P. A.

Board of Directors
Sossner Tap and Tool Corporation
1800 Walt Whitman Road
Melville, New York 11746

Gentlemen:

We enclose the following financial statements of SOSSNER TAP AND TOOL CORPORATION:

EXHIBIT A - Balance Sheet, November 30, 1974

EXHIBIT B - Statement of Income and Retained Earnings (Deficit)
Nine months ended November 30, 1974

EXHIBIT C - Statement of Changes in Financial Position
Nine months ended November 30, 1974

NOTES TO FINANCIAL STATEMENTS

EXHIBIT D - Schedule of Selling, Administrative and Manufacturing Expenses
Nine months ended November 30, 1974

The accompanying financial statements were not audited by us and accordingly we do not express an opinion on them.

Gale, Takahashi & Channon

March 14, 1974

BEST COPY AVAILABLE

EXHIBIT A

SOSSNER TAP AN[D] [DIE] CORPORATION

BALA[NCE SHEET]

NOVEMBER [30], 1974
(Unaudited)

ASSETS

CURRENT ASSETS:		
Cash		$ 88,506
Accounts receivable - trade	$ 302,707	
Less - allowance for doubtful accounts	(10,000)	292,707
Accounts receivable - other		3,457
Inventory		753,914
Prepaid expenses		6,545
Total current assets		$1,143,129
PROPERTY AND EQUIPMENT:		
Land	$ 119,000	
Building	726,366	
Machinery and equipment	1,096,804	
Furniture and fixtures	43,736	
Automobiles	12,553	
	$1,998,459	
Less - accumulated depreciation	941,634	1,056,825
DEPOSITS - lease and utility		200
CASH SURRENDER VALUE OF LIFE INSURANCE		1,320
		$2,201,474

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES:		
Current maturities of long-term liabilities		$ 1,860
Accounts payable - trade		80,403
Accounts payable - other		561
Accrued expenses		58,888
Accrued and withheld payroll taxes		8,150
Accrued taxes - other		1,008
Due to OSG Tap and Die, Inc., parent company -		
Notes payable, current portion	$ 34,395	
Trade accounts	160,924	195,319
Total current liabilities		$ 346,189
NOTE PAYABLE TO OSG TAP AND DIE, INC., parent company -		147,068
INSTALLMENT NOTE PAYABLE	$ 4,805	
Less - current maturities	1,860	
Net long-term portion installment note		2,945
STOCKHOLDERS' EQUITY:		
Capital stock - common, par value $1, authorized 20,000 shares; issued and outstanding 100 shares	$ 100	
Contributions to capital in excess of par value	2,102,185	
Retained earnings (deficit) (Exhibit B)	(397,013)	
Total stockholders' equity		1,705,272
		$2,201,474

The accompanying notes are an integral p[art of the] financial statements [of] this exhibit.

EXHIBIT B

SOSSNER TAP AND TOOL CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS (DEFICIT)

NINE MONTHS ENDED NOVEMBER 30, 1974
(Unaudited)

Sales	$1,855,948
Cost of goods sold:	
Inventory - beginning	$ 602,626
Material purchases	336,276
Direct labor	285,376
Manufacturing expenses (Exhibit D)	845,695
	$2,069,973
Inventory - end	753,914
Cost of goods sold	$1,316,059
Gross profit	$ 539,889
Selling and administrative expenses:	
Selling (Exhibit D)	$ 241,481
Administrative (Exhibit D)	249,090
	$ 490,571
Operating income	$ 49,318
Other income (expenses):	
Cash discounts earned	$ 571
Gain on sale of assets	3,031
Miscellaneous income	796
Cash discounts allowed	(23,523)
Interest expense - net	(12,615)
Office employees' pension plan contributions	(6,391)
Total other income (expenses)	$ (38,131)
Net income	$ 11,187
Retained earnings (deficit):	
Beginning of the period	(408,200)
End of the period	$ (397,013)

The accompanying notes to financial statements are an integral part of this exhibit.

EXHIBIT C

SOSSNER TAP AND TOOL CORPORATION

STATEMENT OF CHANGES IN FINANCIAL POSITION

NINE MONTHS ENDED NOVEMBER 30, 1974
(Unaudited)

SOURCE OF FUNDS:		
Income from operations (Exhibit B)	$11,187	
Add - expenses not requiring outlay of working capital during current period	79,617	
Working capital provided by operations		$ 90,804
Deposits applied		425
Proceeds of sale of assets		15,340
Long-term loan from OSG Tap and Die, Inc. (Illinois)		147,068
Total source of funds		$ 253,637
USE OF FUNDS:		
Purchases of property and equipment -		
Machinery and equipment	$33,385	
Furniture and fixtures	704	
Automobile	9,960	
	$44,049	
Less amount financed by long-term loan	2,945	
Total use of funds		$ 41,104
INCREASE IN WORKING CAPITAL		$ 212,533

CHANGES IN WORKING CAPITAL:

	Increase (Decrease) in Working Capital
CURRENT ASSETS:	
Cash	$ 85,866
Accounts receivable - trade	19,491
Accounts receivable - other	1,566
Inventory	151,288
Prepaid expenses	(11,271)
Total current assets	$ 246,940
CURRENT LIABILITIES:	
Due to parent company	$(126,703)
Bank overdraft	90,342
Current maturities of long-term liabilities	(1,860)
Accounts payable - trade	(18,924)
Accrued expenses	13,639
Accrued and withholding payroll taxes	10,668
Other current liabilities	(1,569
Total current liabilities	$(34,407)
INCREASE IN WORKING CAPITAL	$ 212,533

The accompanying notes to financial statements are an integral part of this exhibit.

SOSSNER TAP AND TOOL CORPORATION

NOTES TO FINANCIAL STATEMENTS

NINE MONTHS ENDED NOVEMBER 30, 1974
(Unaudited)

NOTE 1 - Significant Accounting Policies:

Inventory is valued at the lower of cost (first-in; first-out) or market.

Property and equipment are recorded at cost. Depreciation is provided on the straight-line method on the estimated life of the respective assets.

Investment credit is accounted for as a reduction of taxes in the year the applicable asset is placed in use.

The management adopted a change in its fiscal year-end from February 28 to November 30, 1974 to conform with the fiscal year of its parent company.

NOTE 2 - Federal Income Taxes:

The company's net income for the nine months ended November 30, 1974 is to be included in a consolidated tax return with its parent company.

A net operating loss carryover of $126,265 and unused investment credit is available to the consolidated group, resulting in no taxable income for the period ended November 30, 1974.

SOSSNER TAP AND TOOL CORPORATION

SCHEDULE OF SELLING, ADMINISTRATIVE AND MANUFACTURING EXPENSES

NINE MONTHS ENDED NOVEMBER 30, 1974
(Unaudited)

	Selling Expenses	Administrative Expenses	Manufacturing Expenses	Total
Salary expense	$ 29,709	$ 81,163	$380,530	$ 491,402
Commissions	170,331			170,331
Payroll taxes	2,137	4,767	45,101	52,005
Employee welfare		701	685	1,386
Travel and entertainment	3,007	5,799	2,402	11,208
Insurance - group	1,407	8,143	37,776	47,326
- general	523	2,110	11,774	14,407
Telephone and telegraph	11,061	7,252		18,313
Recruiting costs		1,439		1,439
Advertising and sales promotion	17,744			17,744
Samples	1,119			1,119
Trade shows	2,076			2,076
Miscellaneous dues and subscriptions	109	2,182	133	2,424
Auto expense	1,051	3,628	1,345	6,024
Depreciation	921	4,806	73,891	79,618
Taxes - other	286	6,492	18,375	25,153
Contributions		240		240
Legal services		291		291
Accounting services		3,807		3,807
Data processing		11,571		11,571
Miscellaneous		415		415
Provision for doubtful accounts		2,424		2,424
Corporate - administrative expense		92,861		92,861
Stationery and supplies		4,775	58,943	63,718
Equipment rental		4,224	11,727	15,951
Union pension plan			21,764	21,764
Repairs and maintenance			22,956	22,956
Utilities			64,409	64,409
Protection service			2,095	2,095
Miscellaneous freight prepaid			20,753	20,753
Professional and consulting fees			10,128	10,128
Perishable tooling			60,908	60,908
	$241,481	$249,099	$845,695	$1,336,266

The accompanying notes to financial statements are an integral part of this exhibit.

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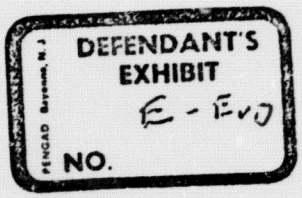

SOSSNER TAP AND TOOL CORPORATION

FINANCIAL STATEMENTS

YEAR ENDED FEBRUARY 28, 1974

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GALE, TAKAHASHI & CHANNON
CERTIFIED PUBLIC ACCOUNTANTS
110 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60603
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SEYMOUR L. GALE, C. P. A.
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ALLEN D. SERED, C. P. A.
RALPH FUJIMOTO, C. P. A.

Sossner Tap and Tool Corporation
1800 Walt Whitman Road
Melville, New York 11746

Gentlemen:

We enclose the following financial statements of SOSSNER TAP AND TOOL CORPORATION:

EXHIBIT A - Balance Sheet, February 28, 1974

EXHIBIT B - Statement of Retained Earnings (Deficit)
Year ended February 28, 1974

EXHIBIT C - Statement of Income (Loss)
Year ended February 28, 1974

NOTES TO FINANCIAL STATEMENTS

EXHIBIT D - Schedule of Sales, Administrative and Indirect Manufacturing Expenses
Year ended February 28, 1974

The accompanying financial statements were not audited by us and accordingly we do not express an opinion on them.

These statements are restricted to internal use by management and do not include a statement of changes in financial position and other disclosures which might be required for a fair presentation.

Gale, Takahashi & Channon

June 20, 1974

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EXHIBIT A

SOSCHER TAP & TOOL CORPORATION

BALANCE SHEET

FEBRUARY 28, 1974
(Audited)

ASSETS

CURRENT ASSETS:			
Cash			$ 640.00
Accounts receivable - trade		$281,016.22	
Other accounts receivable		1,891.18	
		$282,907.40	
Less - allowance for doubtful accounts		7,800.00	275,107.40
Inventory at lower of cost (first-in, first-out) or market (Note 3)			602,625.40
Prepaid expenses			17,816.35
Due from parent - OSC Tap and Die, Inc.			2,031.76
Total current assets			$ 898,220.91

PROPERTY AND EQUIPMENT (Note 2):

	Cost	Accumulated depreciation	Net	
Land	$ 119,000.00	$ -0-	$119,000.00	
Buildings and improvements	726,365.50	181,242.69	545,122.81	
Machinery and equipment	1,090,557.51	665,596.32	424,961.14	
Automobiles	7,835.20	1,672.23	6,162.97	
Office furniture, fixtures and equipment	44,829.73	31,023.64	13,806.09	
	$1,988,587.94	$879,534.93		1,109,053.01
DEPOSITS				625.00
				$2,007,898.92

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES		
Bank overdrafts		$ 90,342.38
Accounts payable - trade		61,479.04
Accrued payroll		15,568.91
Accrued vacation and sick pay		41,227.79
Payroll taxes withheld and accrued		18,818.45
Commissions payable		15,730.11
Due to parent - OSC Tap and Die, Inc. (Note 1) -		
Management fees	$ 18,245.47	
Interest	2,402.04	
Advance	50,000.00	70,647.51
Total current liabilities		$ 313,814.19
STOCKHOLDERS EQUITY (Exhibit C):		
Capital stock - common, par value $1.00, authorized 20,000 shares; issued and outstanding 100 shares (Note 1)	$ 100.00	
Contributions to capital in excess of par value (Note 1)	2,102,184.60	
Retained earnings (deficit) (Exhibit C)	(408,199.87)	1,694,084.73
		$2,007,898.92

The accompanying letter and notes to financial statements are an integral part of this exhibit.

82A

EXHIBIT B

SOSSNER TAP AND TOOL CORPORATION

STATEMENT OF RETAINED EARNINGS (DEFICIT)

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

Balance at February 28, 1973	$(38,014.57)
Excess of prior years' accelerated depreciation for income tax over straight-line depreciation for financial statements	(238,740.04)
Balance at February 28, 1973 as restated	$(276,754.61)
Net loss for year (Exhibit C)	(131,445.26)
Balance (deficit) at February 28, 1974 (Exhibit A)	$(408,199.87)

The accompanying letter and notes to financial statements are an integral part of this exhibit.

GALE, TAKAHASHI & CO., CERTIFIED PUBLIC ACCOUNTANTS, LOS ANGELES

EXHIBIT C

SOSSNER TAP AND TOOL CORPORATION

STATEMENT OF INCOME (LOSS)

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

	Amount	% to Sales
Net sales	$2,159,704.18	100.0%
Cost of goods sold:		
Inventory - February 28, 1973	$ 398,027.38	
Add - costs of production -		
Direct labor	410,300.93	
Indirect manufacturing expenses (Exhibit D)	1,112,999.63	
Purchases	295,261.70	
Total	$2,216,589.64	
Inventory - February 28, 1974	602,625.40	
Cost of goods sold	$1,613,964.24	74.8
Gross profit	$ 545,739.94	25.2%
Operating expenses:		
Selling expenses (Exhibit D)	$ 284,856.18	13.2%
Administrative expenses (Exhibit D)	228,899.16	10.6
Total	$ 513,755.34	23.8%
Operating income	$ 31,984.60	1.4%
Other income (expense):		
Discounts earned	$ 3,715.11	
Interest earned	3,040.85	
Contributions to pension and retirement plans	(34,360.41)	
Interest expense	(2,402.04)	
Loss on sale of fixed assets	(513.00)	
Net other expense	$ (30,519.49)	(1.4)
Income before extraordinary charges	$ 1,465.11	-0-%
Extraordinary charges (Note 3)	(132,910.37)	(6.2)
Net loss	$ (131,445.26)	(6.2%)

The accompanying letter and notes to financial statements are an integral part of this exhibit.

SOSSNER TAP AND TOOL CORPORATION

SCHEDULE OF SALES, ADMINISTRATIVE AND INDIRECT MANUFACTURING EXPENSES

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

84a

	Sales Expenses	Administrative Expenses	Indirect Manufacturing Expenses	Totals
Salaries and wages:				
Sales salaries	$ 48,603.96	$	$	$ 48,603.96
Administrative salaries		105,760.08		105,760.08
Manufacturing office salaries			22,398.04	22,398.04
Foremen's salaries			79,557.81	79,557.81
Maintenance salaries			48,096.02	48,096.02
Shipping and receiving salaries			20,972.08	20,972.08
Elektralube salaries			12,115.61	12,115.61
Packaging salaries			37,844.22	37,844.22
Inspection salaries			45,459.40	45,459.40
Non-productive direct labor			74,811.03	74,811.03
Other indirect labor			83,372.33	83,372.33
Holiday pay			20,299.10	20,299.10
Overtime premium			40,830.43	40,830.43
Incentive pay			22,342.23	22,342.23
Provision for vacation and sick pay	2,561.66	6,078.37	61,271.97	69,912.00
Taxes:				
Employer FICA tax	2,385.38	4,586.66	53,297.61	60,269.65
Federal and State unemployment taxes	552.00	1,200.00	11,936.49	13,688.49
Real property tax	306.61	1,922.68	23,979.48	26,208.77
State franchise taxes		2,376.00		2,376.00
Other taxes		1,003.93	358.06	1,361.99
Insurance:				
Group	2,124.69	6,016.15	45,988.27	54,129.11
General	543.04	849.35	12,256.23	13,648.62
Perishable tools			68,431.35	68,431.35
Factory and shipping supplies			60,639.47	60,639.47
Building maintenance and supplies			14,395.57	14,395.57
Stationery and supplies		9,770.04		9,770.04
Heat, light, water and power			58,684.54	58,684.54
Freight			23,105.77	23,105.77
Repairs and maintenance		2,763.30	33,693.01	36,456.31
Protection service			2,088.98	2,088.98
Equipment rental	1,064.81	4,197.79	1,642.30	6,904.90
Consulting			985.00	985.00
Outside processing			331.00	331.00
Depreciation	1,028.36	4,473.04	129,377.77	134,879.17

The accompanying letter and notes to financial statements are an integral part of this exhibit.

SOSSNER TAP AND TOOL CORPORATIC

SCHEDULE OF SALES, ADMINISTRATIVE AND INDIRECT MAING EXPENSES

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

850

	Sales Expenses	Administrati Expenses	Indirect Manufacturing Expenses	Totals
Auto expense	$	$ 4,631.66	$ 635.89	$ 5,267.55
Telephone and telegraph	12,567.17	9,003.59		21,570.76
Travel and entertainment	4,719.41	10,846.71	1,707.73	17,273.85
Commissions - sales representatives	195,393.65			195,393.65
Advertising	9,988.58			9,988.58
Samples	2,631.93			2,631.93
Trade shows	82.64			82.64
Dues, subscriptions and miscellaneous	302.29	2,939.74	94.84	3,336.87
Recruiting costs		3,091.91		3,091.91
Employee welfare		1,678.99		1,678.99
Legal services		625.00		625.00
Accounting services		15,792.36		15,792.36
Charitable contributions		326.05		326.05
Provision for uncollectible accounts		4,645.29		4,645.29
Management fees		24,320.47		24,320.47
	$84,856.18	$228,899.16	$1,112,929.63	$1,626,754.97

The accompanying letter[illegible] notes [illegible]al statements are an integral part of this.

GALE, TAKAHASHI & [illegible] CERTIFIED PUBLIC ACCOUNTANTS [illegible]

SOSSNER TAP AND TOOL CORPORATION

NOTES TO FINANCIAL STATEMENTS

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

NOTE 1 - Incorporation and changes in stockholders:

Sossner Tap and Tool Corporation was incorporated in 1967 as a New York corporation to acquire the net assets of Sossner Corp., Pioneer Corp. and Lynbrook Realty Corp. The capital in excess of par value arose as follows:

Cash paid for net assets	$1,507,500
Additional organization costs	14,387
	$1,521,887
Less - common stock issued	100
Capital in excess of par value as of February 28, 1973	$1,521,787
Indebtedness to former parent company converted to capital	580,397
Balance, February 28, 1974	$2,102,184

On August 1, 1973 OSG Tap and Die, Incorporated, an Illinois corporation, purchased 100% of the issued and outstanding capital stock of Sossner Tap and Tool Corporation from its former parent company.

NOTE 2 - Significant accounting policies and changes affecting prior years:

Prior to March 1, 1973, the company depreciated its assets under the declining balance method for tax purposes and under the straight-line method for book purposes.

In order to eliminate the divergence between book and tax basis, the new management adopted the policy of providing depreciation under the straight-line method over the remaining life of each asset computed on the net book value resulting from the method used for tax purpose. Retroactive adjustment of $238,740 was made by a charge to retained earnings to record the additional accumulated depreciation necessary to reflect this change.

SOSSNER TAP AND TOOL CORPORATION

NOTES TO FINANCIAL STATEMENTS

YEAR ENDED FEBRUARY 28, 1974
(Unaudited)

NOTE 3 - Extraordinary charges:

A difference of $105,941 between the physical inventory and the book inventory was disclosed upon physical count taken by management. $37,855 of this was charged against a pre-existing reserve for inventory loss, and the remaining $68,086 was charged to current income.

A physical accounting of the machinery and equipment by management revealed that numerous items remaining on the books were no longer in existence. The undepreciated cost of these items amounting to $64,824 was charged against current income.

NOTE 4 - Federal income taxes:

For prior years, the company's income has been included in the consolidated income tax return of its former parent company. The net loss for the period March 1 to July 31, 1973, the date of acquisiton by OSG Tap and Die, Incorporated, is includible in the consolidated income tax return of the former parent for the year ended February 28, 1974.

As of March 1, 1974, the net operating loss deduction available to the company to offset taxable income of subsequent periods was approximately $126,265.

The consolidated Federal income tax return of Sossner and its former parent company have been examined by the Internal Revenue Service for the year ended February 28,1971.

88A 23340

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

G. T. FLAMMIA,

Plaintiff,

-against-

MITE CORPORATION and O.S.G. TAP AND DIE, INC.,

Defendants.

- -x

73 Civ. 1571

OPINION

October 6, 1975

Statement of Facts

Plaintiff seeks compensation for services allegedly performed for the defendants, Mite Corporation ("Mite") and O.S.G. Tap and Die, Inc. ("O.S.G."), in connection with the purchase by O.S.G. of a Mite subsidiary, the Sossner Tap & Tool Corporation ("Sossner"). The demand for such services is $200,000 (an amount equivalent to 10% of the purchase price). Plaintiff in his complaint asked in state court for remuneration on the basis of implied contract and quantum meruit. The action was removed to this Court on diversity grounds.

Both defendants have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and have submitted statements of uncontested facts pursuant to Rule 9(g) of the Eastern District Rules. The defendants ground their requests on the Statute of Frauds of New York

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(New York General Obligations Law 5-701(10)) suggesting that the Statute bars suits for finder's fees due under alleged oral agreements. Plaintiff, seeking partial summary judgment, asks the court to strike defenses three and four of Mite, and defenses three, four, and five of O.S.G. Defenses three and four in the answers of both defendants are defenses under the Statutes of Frauds of New York and Illinois. O.S.G.'s fifth defense claims that New York Real Property Law § 442-d, barring actions by unlicensed real estate brokers for services tendered pursuant to real estate sales, applies under the facts of this case.

There is no dispute as to the following material facts. Plaintiff is a resident of New York and has been so continuously since 1948. Sossner, a company which manufactures taps, is a New York corporation whose only facilities are located in New York. Plaintiff is a former employee of Sossner. He served as a plant manager, and acquired a stock interest in the company in 1952. In 1960, he became Sossner's Vice President. In 1967, when plaintiff was President of Sossner, Helicoil Corporation acquired the company and plaintiff's stock interest.

In 1970, Mite, a Delaware corporation with its principal place of business in Connecticut, acquired Helicoil, including the Sossner subsidiary. Plaintiff continued as President at an annual salary of $35,000 until March 5, 1973, when he resigned because of policy

disagreements with Mite. Prior to his resignation, plaintiff made an unsuccessful attempt to purchase Sossner from Mite. When this effort failed, plaintiff established his own tap manufacturing company, Pioneer Tap & Tool Corporation ("Pioneer").

On May 14, 1973, plaintiff, while attending a convention in Chicago, Illinois, visited the offices of O.S.G. in Elmhurst to inquire about the possibility of O.S.G. supplying semi-finished taps to Pioneer for further finishing and resale. During the course of the day, plaintiff had general discussions concerning the tool cutting business with O.S.G. personnel, among whom were Robert Zoppelt, President, and Terry Osawa, Vice President of O.S.G.

After lunch on that same day, plaintiff, having "sensed the idea that O.S.G. was looking for some sort of expansion in the United States", brought up the subject of Sossner. During the ensuing conversation, O.S.G. personnel discussed the possibility of investigating the availability of Sossner for purchase. Plaintiff indicated that he would be willing to contribute 5% of the estimated purchase price of $2,000,000 and to serve as President of Sossner if Sossner should be acquired by O.S.G. Plaintiff then suggested that before they discussed the matter further he should find out whether Sossner was actually for sale.

At this point, plaintiff placed a telephone call from the O.S.G. offices to Mr. Leo Brancato, Executive Vice President of Mite, at Mite's Connecticut office. Mr. Brancato was not in, but by late that afternoon plaintiff, still in

Illinois, was able to reach Mr. Brancato in Connecticut. The plaintiff told Mr. Brancato that he knew of a company that might be interested in Sossner and asked whether the company was for sale. Mr. Brancato indicated that Mite was not actively seeking a buyer for Sossner but that he would nevertheless mull the matter over.

On May 16, 1973, plaintiff, apparently still in Illinois, telephoned Mr. Brancato to inquire further about Mite's plans for Sossner. Mr. Brancato indicated that he had not given the matter much thought and that it "remained indefinite in his mind". During the course of the conversation, plaintiff told Mr. Brancato that O.S.G. was the interested party, and that he had been authorized to say so by Mr. Zoppelt.

On May 17, 1973, plaintiff returned to his home in New York and wrote two letters, one to Mr. Osawa at O.S.G. and one to Mr. Brancato at Mite. In his letter to Mr. Osawa, plaintiff indicated that he had spoken to Mr. Brancato on May 16th and had revealed O.S.G. as the party interested in Sossner. He also told Osawa of Mr. Brancato's statement that he would mull over the possibility of selling Sossner. Plaintiff's letter to Mr. Brancato advised him to consider seriously the possibility of selling Sossner to O.S.G.

On May 24, 1973, plaintiff, again in New York, called Mr. Brancato to check on Mite's position with respect to a possible sale. On the same day, Mr. Zoppelt wrote a letter to the plaintiff at his New York residence expressing

an interest in Sossner, informing plaintiff that O.S.G. could handle the deal financially, indicating that Mr. Osawa's father (an expert in the tool cutting industry) would probably want to visit the Sossner facility and most importantly, thanking plaintiff for "making contact at Sossner" and saying that he look forward to "hearing the results of your discussions with him (Brancato) on May 23 or 24."

Between May 24, 1973 and June 2, 1973, plaintiff communicated with Mr. Zoppelt three times. On May 29, 1973 and June 2, 1973, plaintiff made telephone calls from New York to Mr. Zoppelt at O.S.G. The purpose of these calls was to inquire how the discussions between O.S.G. and Mite were proceeding. The third communication was a letter dated June 2, 1973 from the plaintiff in New York to Mr. Zoppelt in which the plaintiff indicated that "rather than confuse the possible deal" he would delay his decision to begin the marketing or manufacturing of tools by his own corporation under the Pioneer name.

Plaintiff's next contact with either defendant was a letter dated June 4, 1973, written in New York and addressed to Mr. Brancato in Danbury, Connecticut. This letter suggested that if Mite and O.S.G. should consummate a deal for the sale of Sossner, plaintiff would be entitled to a finder's fee. Mr. Brancato responded to this claim in his letter of June 6, 1973, addressed to the plaintiff, wherein he flatly stated

that Mite never authorized the plaintiff to act on its behalf, and that plaintiff would have to look to the buyer for any possible finder's fee. On receipt of Mr. Brancato's letter, plaintiff telephoned Mr. Brancato in Connecticut from his New York residence. Mr. Brancato reiterated that Mite would not pay any finder's fee and that if plaintiff expected any fee he should look to the buyer.

However, the plaintiff at no time before bringing this lawsuit notified O.S.G. that he expected a finder's fee from them. Rather, his plan was to participate with O.S.G. in the corporate acquisition, obtaining a 5% interest in Sossner and serving as its president after the transaction was consummated.*

On June 12, 1973, Messrs. Zoppelt and Osawa came to New York to meet with the plaintiff and visit the Sossner manufacturing facility. During that trip Messrs. Zoppelt and Osawa had conversations with the plaintiff at his New York residence and asked the plaintiff to prepare a memorandum setting forth his proposal for employment at Sossner in the event that Sossner was purchased. Plaintiff prepared his memo and delivered it to Mr. Zoppelt at the latter's hotel in New Yo

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* Plaintiff was candid in discussing his motivation for making the introduction of O.S.G. to Mite; in response to the question, "Had you had a discussion about a finder's fee with them [O.S.G.] before that [June 7, 1973]?", plaintiff replied, "No, my finder's fee was the fact I was going to go to work there and do exactly what I wanted, I guess, all the time." (Flamaia dep. p. 27).

Plaintiff proposed terms which were found completely unacceptable by O.S.G. officers.

Fearing that O.S.G. and the plaintiff would not come to terms about his participation in the project, Mr. Zoppelt considered the possibility of asking Warren Demory, plaintiff's successor as president of Sossner and at that time an employee of Mite, to remain with Sossner if the purchase was consummated. Mr. Zoppelt discussed this with Mr. Brancato and was told that Demory would be free to consider an offer from O.S.G. Mr. Demory eventually was hired as Executive Vice President of Sossner.

The negotiations between Mite and O.S.G. proceeded rapidly. From mid-May to the end of June, Messrs. Zoppelt and Brancato were in touch by phone regularly about the proposed transaction. In addition, Mr. Brancato sent a letter dated May 30, 1973, to Mr. Zoppelt which provided O.S.G. with financial information about Sossner.

On June 27, 1973 representatives of O.S.G. and their attorneys met with representatives of Mite and their attorneys in New York. At this meeting the negotiations were virtually completed and a letter of intent was signed by both parties.

On July 2, 1973, Mr. Zoppelt wrote a letter addressed to the plaintiff at his New York residence again offering plaintiff a position at Sossner on the condition that plaintiff serve as Vice President in charge of manufacturing (reporting to Mr. Demory) at a salary of $30,000 per year. Provisions were made for an automobile, an appropriate expense account, and participation in the management and profit sharing program. Mr. Demory informed the plaintiff on July 6 in New York that the period of his contract of employment would be one year. Plaintiff told Mr. Demory that a one year contract would not work out and rejected the O.S.G. offer.

By letter dated July 13, 1973, Mr. Demory confirmed the plaintiff's rejection of July 6. Mr. Zoppelt expressed his regrets that the plaintiff could not come to an agreement with O.S.G. on terms of employment in a similar letter dated July 17, 1973.

On August 1, 1973, a stock purchase agreement was signed by representatives of Mite and O.S.G. whereby O.S.G. purchased Sossner from Mite.

I

Defense Motion for Summary Judgment

Defendants Mite and O.S.G. move for summary judgment under New York's Statute of Frauds. In pertinent part, General Obligations Law § 5-701 provides that

> "Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:
>
> * * *
>
> "10. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity, business, its good will, inventory, fixtures or an interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. 'Negotiating' includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman."

A. The Joint Venture Theory

Before discussing the effect of these provisions on this action, the Court will consider the argument introduced by plaintiff's counsel in response to defendant's claim the Statute bars this action. Counsel suggests that § 5-701, which on its face applies where recovery is sought under an oral finder's or broker's contract, is inapplicable

because plaintiff's contract is a joint venture contract. Plaintiff and O.S.G., it is said, agreed to conduct a joint venture which had as its object the acquisition and operation of Sossner. In assessing this argument, we will treat it as a motion to amend plaintiff's complaint.

1. The Choice of Law Question

We begin by determining which State's law is controlling as to the existence or non-existence of a joint venture contract. The contract is alleged to have been made between a New York and an Illinois resident (plaintiff and O.S.G.). Its object was the purchase of a subsidiary of Mite, a Delaware corporation with its principal place of business in Connecticut. The subsidiary, Sossner, is a New York corporation, with its only offices and manufacturing facilities in New York. The place where the contract was allegedly made was Illinois.

In deciding this choice of law issue, we apply the conflicts principles established by New York case law.

New York utilizes the "interest analysis" approach to choice of law problems. Auten v. Auten, 308 N.Y. 155 (1954) That is, the forum is to apply the law of the jurisdiction with the most interest in the problem and the most concern in the outcome of the particular litigation. Our question thus becomes, which State has the most concern about the existence of the alleged joint venture.

Clearly, it is of little moment to the States of Mite's incorporation and principal business location whether the purchaser of Mite's property is a corporation (O.S.G.) or a joint venture (O.S.G. and plaintiff). Nor is it significant that Illinois was the place where the contract was allegedly made. That an agreement between highly mobile businessmen about a venture to purchase New York property would have been reached in Illinois can only be termed "accidental," and by itself creates no interest in the matter for Illinois.

The parties to the alleged venture are New York and Illinois residents, and both States therefore have some interest in the venture's status. But the crucial factor is that the object of the alleged venture was the purchase and operation of a New York corporation. New York has a far more immediate concern than Illinois in determining which parties actually possess an interest in New York property, and of what their interests consist. Thus, considering that one party to the alleged venture is a New York resident, and that the purpose of the venture was to acquire and operate a New York corporation, the Court finds that New York's interest in the joint venture question is paramount, and applies New York law. We turn to an analysis of the cases setting forth the principles which govern joint venture agreements under New York law.

2. Prerequisites of a Joint Venture

Plaintiff claims that he and O.S.G. agreed to a joint venture. He was to provide 5% of the capital needed to purchase Sossner, and was to make initial contacts to set up negotiations for the purchase. O.S.G. was to provide the bulk of the purchase money.

These allegations are strikingly similar to those made by the plaintiff in Yonofsky v. Wernick, 362 F.Supp. 1005 (S.D.N.Y. 1973). In Yonofsky, the plaintiff contended that he and the defendant entered an oral agreement to acquire and operate as a joint venture a corporate division. Plaintiff was to use his close relationship with the parent corporation's officers to "initiate, influence, arrange and facilitate" the sale of the division, and defendant was to supply the purchase money. Plaintiff claimed the defendant arranged the sale and ousted him from the venture. (Defendant interposed the Statute of Frauds as a defense, but the court found joint venture contracts to be outside the Statute.) The court was faced with the task of determining whether a venture had indeed been created.

Summing up the New York cases on point, the Court established prerequisites for a joint venture contract:

1. There must be a specific agreement to carry on some enterprise for profit;[1/]

2. The agreement must manifest the intent of the parties to be associated as joint venturers;[2/]

3. Each co-adventurer must make a contribution of property, financial resources, effort, skill, or knowledge;[3/]

4. The parties must have some degree of joint proprietorship and control over the enterprise;[4/]

5. There must be a provision for the sharing of profits and, most courts agree, losses.[5/] The profits accruing must be joint and not several.[6/]

1/ 362 F.Supp. at 1031, citing Rizika v. Kowalsky, 207 Misc. 254 (Sup. Ct. Oneida County 1954), aff'd 285 App. Div. 1009 (4th Dept.), reargument and appeal denied, 285 App. Div. 1116 (4th Dept. 1955).

2/ Ibid., citing Shove v. Siegbert, 239 App.Div. 334 (1st Dept. 1933); Hutchinson v. Birdsong, 211 App.Div. 316 (1st Dept. 1925); Levine v. Personnel Institute, Inc., 138 N.Y.S.2d 243 (Sup.Ct. N.Y. County 1954), aff'd, 2 A.D.2d 964 (1st Dept. 1956).

3/ Ibid., citing Wagner v. Derecktor, 306 N.Y. 386, 390 (1954) Mitler v. Friedberg, 32 Misc.2d 78 (Sup.Ct. N.Y. County 1961).

4/ Ibid, citing Wagner, supra; Levine, supra; LaBreire v. Martin, 56 N.Y.S.2d 436 (Sup.Ct. N.Y. County 1945); Taubman, What Constitutes a Joint Venture, 41 Cornell L.Q. 640, 644 (1956); Nichols, Joint Ventures, 36 Va. L.Rev. 425, 439 (1950). See 32 N.Y. Juris. Joint Adventures §§ 1, 10.

5/ Ibid. at 1032, citing Steinbeck v. Gerosa, 4 N.Y.2d 302 (1958); Wagner, supra; George W. Haxton & Son., Inc. v. Rich, 267 App.Div. 492 (3d Dept. 1944); Columbian Laundry v. Hercken, 203 App.Div. 140 (1st Dept. 1922) and four State Supreme Court cases.

6/ See United States v. Standard Oil, 155 F.Supp. 121, 148 (S.D.N.Y. 1957), aff'd, 270 F.2d 50 (2nd Cir. 1959).

After a review of the cited authorities, this Court is of the opinion that this summary fairly states the law on point.

Yonofsky concluded with an analysis of the conversation at which the joint venture allegedly was made. Defendant admitted plaintiff discussed with him the acquisition of the corporate division. He contended that plaintiff voluntarily offered to speak to the parent corporation as to the availability and price of the division. He admitted that plaintiff, during the conversation, expressed a desire to "get into the act." 362 F.Supp. at 1033. Despite all of this, the Court found that no specific joint venture agreement was reached:

> "Viewed in the light most favorable to plaintiff, the testimony reveals that Yonofsky was promised something by defendant if he aided defendant's acquisition of the DeJur Potentiometer Division. But that something was never clearly revealed; it certainly was not a fifty-percent interest in defendant's business. Perhaps it was a promise of employment, but even this was never definitely worked out between the parties. Whatever arrangement may have existed between the parties was at best vague and indefinite. The court concludes that plaintiff has failed to carry his burden to establish, by a preponderance of the credible evidence, that defendant agreed to enter into the asserted joint venture." Id. at 10

In Yonofsky the judge was reviewing evidence introduced at trial. Here we deal with a motion for summary judgment, and we cannot rule that plaintiff's joint venture theory fails for lack of an express agreement, as a matter of law, unless no genuine factual issue exists. The party opposing a summary judgment motion is to be given the benefit

of all reasonable doubts in determining whether a genuine issue remains. Adickes v. S.H. Kress and Company, 393 U.S. 144 (1970); First National Bank of Cincinnati v. Pepper, 454 F.2d 626 (2d Cir. 1972); see Wright & Miller, Federal Practice and Procedure: Civil §§ 2725, 2727. Facts asserted by the party opposing the motion, if supported by affidavits or other evidentiary material, are regarded as true. First National Bank of Cincinnati v. Pepper, supra.

In the instant case, plaintiff offers some evidence to support his claim that a joint venture agreement was reached with Mr. Zoppelt. At p. 41 of plaintiff's deposition he describes his meeting with Zoppelt on May 14, 1973, as follows:

> "Q Mr. Flamnia, you indicated that when you talked to Mr. Zoppelt in Chicago during May, that you had some kind of an agreement as to your employment with Sossner should Sossner be purchased by O.S.C.?
>
> A Yes.
>
> Q Could you tell us, or would you outline for us, what the agreements were that you entered into at that time?
>
> A He agreed to employ me as president and allow me to be a part owner of the corporation.
>
> And he was very happy that I was willing to be a part owner of the corporation, because that is the only way he would like to operate.
>
> Q Was there any discussion as to the amount of salary or income that you were to receive in this position?
>
> A He said that he -- I would say at least as much as I did working for Sossner, if not more, plus a tremendous potential which went up into the six-figure bracket; he talked about $100,000 a year."

Plaintiff indicates in other portions of his deposition as well that he believes a binding agreement was entered, see, e.g., pp. 25, 26-27.

It should also be noted that Mr. Zoppelt, at several points during his deposition, refers to a "joint venture" which his corporation formed with the plaintiff.

This evidence does not make the existence of a joint venture contract a certainty. Indeed, strong evidence to the contrary is also contained in the record. And it is not clear at this time whether Mr. Zoppelt had actual or apparent authority to bind his corporation, O.S.G., in a joint venture contract.

But the Court is of the opinion that the evidence supporting plaintiff's position is adequate to preclude a grant of summary judgment against him. Accordingly, the Court holds that the question of the existence of a joint venture contract between plaintiff and O.S.G. must be determined at trial.

B. Statute of Frauds

Plaintiff introduced his joint venture theory as an answer to defendant's claim that the Statute of Frauds barred an oral finder's contract. In response to a motion for summary judgment, this Court will also determine if there is an alternative legal theory which requires that the motion be denied. We proceed to consider whether the signed memoranda, introduced by the parties and relating to their dealings, take the case out of the Statute.

1. The Choice of Law Question

Again we begin by determining which State's law governs the matter to be considered. Defendants have interposed the Statute of Frauds as an affirmative defense and argue that New York law should be applied. Plaintiff alleges in his complaint that the law of Illinois is controlli The Court finds that under the circumstances of this case, it is appropriate to apply the law of New York.

Under the "interest analysis" conflicts approach (see Auten v. Auten, supra) we apply the law of the State with the greatest interest in the resolution of the legal iss Intercontinental Planning, Ltd. v. Daystrom, 24 N.Y. 2d 372 (1969), clearly stated the concern of New York as a center of finance with regulating the activities of its resident finders and brokers.

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In Daystrom the Court of Appeals was required to choose between the contract law of New York and that of New Jersey in determining the validity of an oral contract between a New Jersey principal and a New York finder. The court reviewed the legislative history of General Obligations Law § 5-701(10) and concluded that the requirement of a writing under subdivision 10 was based "at least in part upon the premise that the 'danger of erroneous verdicts' in allowing juries to determine claims for brokerage and finder's fees on oral testimony warranted [it]." 24 N.Y.2d at 383, citing Minichiello v. Royal Business Funds Corp., 18 N.Y.2d 521, 526-27 (1966), cert. denied 389 U.S. 820 (1967).

In addition, § 5-701 was intended to "protect the principals in the sale of a business interest from the type of claim being asserted here -- a . . . finder's fee not supported by the written evidence." 24 N.Y.2d at 383. This policy protects not only the interests of New York residents, but also those of foreign principals who utilize New York brokers or finders:

> "It is common knowledge that New York is a national and international center for the purchase and sale of businesses and interests therein. We conclude therefore that the Legislature in enacting subdivision 10 of former section 31 intended to protect not only its own residents, but also those who come into New York and take advantage of our position as an international clearing house and market place. This is true because of all the jurisdictions involved, New York law affords the foreign principals the greatest degree of protection against the unfounded claims of brokers and finders. This encourages the use of New York brokers and finders by foreign principals and contributes to the economic development of our State. Our brokers and finders need only ensure that their agreements for compensation comply with the Statute of Frauds to receive the benefits of New York's position as a business center. Id. at 383, 384.

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This concern of New York for regulating its finders and brokers, and thereby maintaining New York's status as a financial center, was sufficient to justify application of New York law under the "interest analysis" conflicts approach.

A factual situation similar to that of the instant case was the basis of litigation in Pallavicini v. International Telephone and Telegraph Corporation., 41 App. Div. 2d 9[illegible] (1973), aff'd 34 N.Y. 2d 913 (1974). Pallavicini was a foreign unlicensed broker who sought a commission for services rendered in connection with the purchase by defendant, Sheraton Hotels, of a hotel in Mexico. According to the plaintiff, the services included a conversation during a transcontinental flight, and telephone conversations and correspondence from New York (plaintiff's temporary residence) with persons in other states and countries.

Again because of New York's substantial interest in protecting its reputation as a financial center, the court applied New York law.

Admittedly the two cases cited are cases in which the New York Statute of Frauds absolved the foreign principals of contract liability. It will be seen that in the present case, New York law will not bar plaintiff's quantum meruit claim. We must determine whether this distinguishing characteristic requires that we turn to Illinois for governing law. Stating the task another way, we assume that Illinois law would lead to a contrary result (about which the parties differ). We assume that New York law aids New York's finder, and that Illinois law supports Illinois' principal. The Cou[illegible]

finds that even under these circumstances, New York law must be applied.

The purpose of § 5-701(10) as recited in Daystrom and Pallavicini is to promote New York businesses by protecting foreign clients. It does not follow, however, that New York has no interest in applying its own law when foreign law is even more favorable to foreigners. New York has an important interest in seeing that the choices of law for disputes arising from New York business dealings are made consistently. Only certainty about their rights and duties can persuade principals and brokers that New York is an appropriate place in which to conduct business. No broker could be certain of what legal steps would be required of him if his responsibilities changed with the state or national citizenship of his principals.

And beyond the benefits of certainty are the benefits New York obtains in protecting its brokers and finders from unreasonably unfavorable foreign law. New York does not have an interest in applying the law least favorable toward its residents. Rather, New York is interested in encouraging business by affording reasonable protection both to principals and brokers. The alternative, application of the law least favorable to brokers, might destroy New York commerce by driving brokers from New York.

With these considerations in mind, we apply the law of New York in analyzing the contractual relations of the parties.

2. The Sufficiency of the Memorandum under the New York Statute of Frauds

Subdivision 10 of the Statute of Frauds (N.Y. Gen. Oblig. Law, § 5-701), set out in full at page 9, above, requires that a contract to pay a brokerage commission or a finder's fee be in writing.

Defendants contend that this Section is an absolute bar to the plaintiff's claim and cite Minichiello v. Royal Business Funds Corp., supra, in support of their position. In Minichiello a business broker, with no written memorandum of his alleged contract with the defendants, brought an action in quantum meruit. After reviewing the legislative history surrounding the enactment of Section 5-701 (subd. 10) of the General Obligations Law and its predecessor, Section 31 (subd. 10) of the Personal Property Law, and the recommendations made by the Law Revision Commission with respect to each enactment, the court concluded that both statutes preclude any recovery in quantum meruit. Id. p. 271. However, Morris Cohon & Co. v. Russell, 23 N.Y.2d 569 (1969), narrows the holding of Minichiello to situations where there is a "complete absence of any memorandum." Id. p. 572. Morris Cohon is more applicable to the facts of the case at bar than is Minichiello. See also Peters v. Sigma Data Computing Corp., F.Supp. (E.D.N.Y. July 17, 1975).

In Morris Cohon, plaintiff sought to recover a sum for the "fair and reasonable value" of services [quantum meruit] which it claimed to have rendered as a broker or finder in connection with the sale by the defendant of certain shares of stock. Plaintiff relied upon a clause in the contract of sale between the parties which reads as follows:

> "The sellers represent and warrant that they have dealt with no person or persons other than Morris Cohon & Co. as broker or finder in connection with the transactions in this agreement, and that all negotiations relative to this agreement have been carried on by them without the intervention of any other broker or finder, and the Sellers agree to indemnify Buyer and the Company and hold them harmless against and in respect of any claim for brokerage or finder's commission relative to this agreement whether by said Morris Cohon & Co. or otherwise". 23 N.Y.2 at 573.

In holding that such a memorandum was sufficient to support a claim for compensation in quantum meruit by Morris Cohon & Co. against the sellers, the Court of Appeals made the following pertinent comments in regard to the Statute of Frauds and quantum meruit (23 N.Y.2d at p. 574-75, 297 N.Y.S.2d at p. 951);

> "The Statute of Frauds was designed to guard against the peril of perjury; to prevent the enforcement of unfounded fraudulent claims. But, as Professor Williston observed: 'The Statute of Frauds was not enacted to afford persons a means of evading just obligations; nor was it intended to supply a cloak of immunity to hedging litigants lacking integrity; nor was it adopted to enable defendants to interpose the Statute as a bar to a contract fairly, and admittedly, made' (4 Williston Contracts [3d ed.], § 567A, pp. 19-20)." 23 N.Y.2d at 574.

The court proceeded to explain that a memorandum insufficient to take a contract out of the Statute of Frauds because it failed to state a rate of compensation might nevertheless serve in an action in quantum meruit:

> "We specifically note that in reaching this conclusion we do no violence to the well-established rule that in a contract action a memorandum sufficient to meet the requirements of the Statute of Frauds must contain expressly or by reasonable implication all the material terms of the agreement, including the rate of compensation if there has been agreement on the matter (Pool v. Brunswick-Balke-Collender Co., 216 N.Y. 310, 314, 110 N.E. 619, 620; Donald Friedman & Co. v. Newman, 255 N.Y. 340, 174 N.E. 703, 73 A.L.R. 95; Restatement, 2d, Contracts, § 207 [Tent. Draft No. 4, 1968]). In an action in quantum meruit, however, for the reasonable value of brokerage services, if it does not appear that there has been an agreement on the rate of compensation, a sufficient memorandum need only evidence the fact of plaintiff's employment by defendant to render the alleged services. The obligation of the defendant to pay reasonable compensation for the services is then implied. Indeed, as noted earlier, the statute itself provides that 'This provision shall apply to a contract implied in fact or in law to pay reasonable compensation' (General Obligations Law, § 5-701)." 23 N.Y.2d at pp. 575-76.

It appears from the material in the record that plaintiff is entitled to quantum meruit relief for his time, effort and expense. We need not be concerned at this time with the question whether both or only one of the defendants requested that plaintiff supply services (although in this case it appears that O.S.G. did). If either or both did, plaintiff would appear to be entitled to recovery on a theory of work, labor and services, if nothing else. Any other result would allow defendants unjust enrichment, at plaintiff's

expense, as a consequence of plaintiff's exertions on their behalf and at the behest of at least one of them.

The memoranda indicating that plaintiff is entitled to relief, and the memoranda which take the agreement out of the Statute of Frauds (as in Morris Cohon), are one and the same. First are letters from plaintiff to each defendant dated May 17, 1973. The letters express the plaintiff's role in beginning the Sossner negotiations and urge defendants to consider seriously the possibilities of an acquisition:

> "OSG Tap and Die, Inc.
> 398 West Wrightwood
> Elmhurst, Illinois 60126
>
> Attention: Mr. T. Osawa
>
> Dear Mr. Osawa:
>
> It was a real pleasure to meet and discuss with you and Mr. Zoppelt the possibilities of acquiring Sossner Tool Divion [sic] by OSG.
>
> As you know, I spoke to Mr. Leo Brancato, Executive Vice President of Mite Corporation on Monday, May 14, and told him that I had lined up a possible buyer for the Sossner Division but didn't reveal your company identity.
>
> On Wednesday, May 16th, I spoke to Mr. Brancato again and told him that your company (OSG) was the interested party, after my phone conversation with Mr. Zoppelt on Tuesday afternoon, wherein he authorized me to act in your company's behalf.
>
> Mr. Brancato asked for a little time to mull over the offer to buy Sossner - at least this week-end and said that he would get in touch with me.

He did ask for your name and Mr. Zoppelt and I gave the names to him together with your address and telephone number. I imagine that he is going to draw a D & B on your company before he continues any possible negotiations.

I will keep in touch with Mr. Brancato and if I do not hear from him by Wednesday, May 23rd, I will phone him on Thursday, the 24th.

The more I think about the possibilities of the merger of OSG and Sossner, the more enthusiastic I get.

Very truly yours,

G. T. Flammia
3999 Alken Avenue
Seaford, New York 11783"

"Mite Corporation
Shelter Rock Lane
Danbury, Conn. 06810

Attention: Mr. Leo J. Brancato, Exec. V.P.

Dear Leo:

I sincerely believe that you should very seriously consider the possibilities of selling the Sossner Division to OSG Tap and Die as per our phone conversations last Monday and Wednesday.

As you will recall from my forecast for fiscal 1974, the need for further capital investment in Sossner is heavy and the return on investment will be low this year and the next few years.

During the last couple of months I have visited other cutting tool companies on job interviews and courtesy calls. Very few of those companies are making any money and those few are making the little that they do on large volume and related product mix.

I have notified OSG that you are mulling over the possibilities of entering into negotiations and that you will be getting in touch with me soon.

Very truly yours,

s/
G. T. Flammia
3999 Alken Avenue
Seaford, New York 11783
516-785-2409 or 516-722-3695"

Express reference to the Osawa letter is made in a signed response from Zoppelt dated May 24, 1973. This critical letter acknowledges plaintiff's initial service and, at its end, invites further action in defendants' behalf.

"Mr. G. T. Flammia
3999 Alken Avenue
Seaford, NY 11783

Dear Gerry:

Thank you for your letter of May 17, I look forward to hearing the results of your further discussions with Mr. Brancato.

* * *

We agree with you and believe that the OSG acquisition of Sossner could be very meaningful. Through our Japan production capabilities, ability to furnish automatic thread and flute grinders, etc., we can turn around and solve the problems you have outlined in your proposal in quick order and make this division a major factor in the US tap market. We believe that we are the only ones capable of doing it because no one has the additional production capability to immediately meet the Sossner need.

Mr. Osawa, Terry's father, will be coming to the United States approximately two weeks from now. When he is here, it would be a good time for us to visit the Sossner facilities and meet with yourself and Mr. Brancato. Prior to his visit, it would be well that we had the balance sheet and operating statement for our study and analysis.

Thank you for making the contact at Sossner and we look forward to hearing the results of your discussion with him on May 23 or 24.

Sincerely yours,

OSG TAP AND DIE, INC.

s/ Robert R. Zoppelt
Robert R. Zoppelt
Vice-President"

The next communication in writing, dated June 2, 1973, was a short letter from plaintiff to defendant O.S.G. stating that "rather than confusing the possible deal, I am putting off any final decision to start making taps or any type set up for the present."

On June 4, 1973 plaintiff first mentioned a finder's fee to defendant Mite. Mite flatly rejected the idea that it was responsible for a finder's fee but did not deny plaintiff's participation in the previous events.

On June 13, 1973, plaintiff (in response to a request from Mr. Zoppelt) sent Zoppelt a memo setting forth his proposals for salary and benefits should he be employed by O.S.G. Mr. Zoppelt rejected his terms, and made a written counteroffer to plaintiff dated July 2, 1973. After discussions with Mr. Demory, who was to be plaintiff's superior, plaintiff refused the counteroffer. Mr. Zoppelt confirmed the rejection in writing on July 17, 1973.

These communications, like those in Morris Cohen, sufficiently identify the seller; identify and establish plaintiff's role in the negotiations; establish the subject matter of the transaction; and, most important, acknowledge performance by and obligation to the plaintiff as a consequence of his assistance in arranging the sale of Sossner. Morris Cohen & Co., supra; Peters v. Sigma Data Computing Corp. supra. They are sufficient to support a claim for compensation

depositions.

under a theory of quantum meruit. And they dispel all fears of the type that courts have expressed in the past when applying § 5-701. See Minichiello v. Royal Business Funds Corp., supra; Intercontinental Planning, Ltd. v. Daystrom, supra; and Pallavicini v. International Telephone and Telegraph, supra.

Nor is it significant that the "memorandum" of the agreement consists of a number of separate writings, not all of which are signed by officers of defendants with authority to bind their corporations. Writing sufficient to satisfy the Statute need not be contained in one document. Separate documents dealing with the same subject matter suffice if the connection of documents not signed by a party with those that are signed is demonstrated by internal reference or by subject matter. Transit Advertisers v. New York, New Haven & H.R. Co., 194 F.2d 907 (2d Cir), cert. den. 344 U.S. 817 (1952) Crabtree v. Elizabeth Arden Sales Corp., 305 N.Y. 48 (1953); Marks v. Cowdin, 226 N.Y. (1919). Such is the case here.

Plaintiff's cause of action is not, therefore, barred by the Statute of Frauds. For this reason, as well as because of the possible existence of a joint venture, the defense motion is denied.

PTI-13-3-17-62-1201-9153

II

Plaintiff's Motion for Summary Judgment

Plaintiff requests that the third and fourth defenses of defendants' answers be stricken. Those defenses are based on the Statutes of Frauds of New York and Illinois. It follows from the prior discussion that those defenses are ineffective as a matter of law. Plaintiff's request is granted.

Plaintiff also asks that the fifth defense of defendant O.S.G. be stricken. That defense is based on § 442-d of New York Real Property Law, and will detain us only briefly.

Section 442-d reads:

> "No person, copartnership or corporation shall bring or maintain an action in any court of this state for the recovery of compensation for services rendered, in any place in which this article is applicable, in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesman on the date when the alleged cause of action arose."

The sale of Sossner by Mite was not a sale of real estate within the meaning of the Statute. It is well settled that "If an item of real estate or an interest in real estate, is a mere incident or incidental feature of the transaction obviously the statute should not apply." Dodge v. Richmond, 5 App. Div. 2d 593, 595 (1958) (sale of steel corporation).

"A broker need not be licensed under the provisions of the Real Property Law (Art. 12-A) to bring about a sale of a business." Shalov v. Rosovsky, 136 Misc. 132, 133 (Sup.Ct. App. Term 1929) (drug store business). See also, e.g., Weingast v. Rialto Pastry Shop, Inc., 243 N.Y. 113 (1926); Myer v. Jova Brick Works, Inc., 38 App.Div. 2d 615 (1971). In the absence of evidence that the chief object of the purchase of Sossner was real estate, plaintiff's motion must be granted.

Conclusion

Defendants' motion for summary judgment is denied. Plaintiff's motion for partial summary judgment, as to defenses based on the Statute of Frauds and Real Property Law, is granted. Plaintiff is granted leave to amend his complaint within 21 days so that it sets forth a proper claim on the alleged joint venture contract. A trial must be held to determine, inter alia, whether a joint venture contract existed and the value of services performed by plaintiff for the defendants.

Vincent C. Ch

U.S.D.J.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

G. T. FLAMMIA,

Plaintiff,

- against -

MITE CORPORATION and O.S.G. TAP AND DIE, INC.,

Defendants.
----------X

73 Civ. 1571

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff, by trial counsel, Hanophy & Ledwith, complaining of the defendants herein, alleges as follows:

AS AND FOR A
FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, plaintiff was and still is a resident of the State of New York.

2. At all times hereinafter mentioned, the defendant Mite Corporation was a business corporation organized and existing under the laws of the State of Delaware with its principal offices in the State of Connecticut.

3. At all times hereinafter mentioned, defendant O.S.G. Tap and Die, Inc. was a business corporation organized and existing under the laws of the State of Illinois.

4. During the period between May 14, 1973 and August 1, 1973, plaintiff and defendant O.S.G. entered into a joint venture agreement wherein plaintiff and defendant O.S.G. agreed to purchase together the Sossner Tap and Tool Corporation.

5. It was agreed between plaintiff and O.S.G. that plaintiff would use his special skill and knowledge to initiate

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buy/sell discussions with the then owner of Sossner, defendant Mite Corporation.

6. It was agreed that O.S.G. would supply the bulk of the purchase money and that plaintiff would supply approximately five percent of the purchase money for the purchase of Sossner.

7. It was agreed that plaintiff in view of his special skill and knowledge would be the president, or the chief operational officer of Sossner, after the purchase.

8. It was agreed that plaintiff and defendant O.S.G. would share the profits made by Sossner after the purchase.

9. Plaintiff brought the defendants O.S.G. and Mite Corp. together and the purchase of Sossner was consummated between O.S.G. and Mite Corp. for the sum of TWO MILLION DOLLARS on August 1, 1973.

10. Defendant O.S.G. breached the joint venture agreement in that it ousted the plaintiff from the opportunity to purchase a percentage of the ownership of Sossner and O.S.G. refused to provide plaintiff with the position of president or chief operational officer of Sossner on the terms agreed to in the joint venture agreement.

11. The breach of the joint venture agreement damaged plaintiff in the sum of $200,000.

AS AND FOR A
SECOND CAUSE OF ACTION

12. Plaintiff repeats, reiterates and realleges the allegations of this complaint contained in the paragraphs hereof numbered 1 through 11.

13. The value of the services performed by the plaintiff to the defendants O.S.G. and Mite Corp. was $200,000.

14. Defendants in refusing to compensate plaintiff for the services he rendered have been unjustly enriched.

15. Plaintiff is entitled to be compensated by the defendants in the sum of $200,000 in quantum meruit.

WHEREFORE, plaintiff demands judgment against the defendants herein in the sum of $200,000 on the first cause of action and $200,000 on the second cause of action, together with the interest, costs and disbursements of this action.

Dated: Lynbrook, New York
October 17, 1975

Yours, etc.,

HANOPHY & LEDWITH
Trial Counsel
16 Rocklyn Ave.
Lynbrook, New York 11563
(516) 887-2889

TO: CLEARY, GOTTLIEB, STEEN
& HAMILTON, ESQS.
Attorneys for Defendants
One State Street Plaza
New York, New York 10004
(212) 344-0600

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

G. T. FLAMMIA, Plaintiff, -against- MITE CORPORATION and O.S.G. TAP AND DIE, INC., Defendants.	73 Civ. 1571 ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendants MITE Corporation and O.S.G. Tap and Die, Inc. (hereafter "O.S.G."), by its attorneys, Cleary, Gottlieb, Steen & Hamilton, in answer to the Plaintiff's Amended Complaint, allege:

IN ANSWER TO THE
FIRST CAUSE OF ACTION

1. Admit the allegations contained in paragraph 1.

2. Admit the allegations contained in paragraph 2.

3. Admit the allegations contained in paragraph 3.

4. Deny each and every allegation contained in paragraph 4.

5. Deny the allegations of paragraph 5, except admit that plaintiff introduced defendant O.S.G. to defendant MITE Corporation.

6. Deny each and every allegation contained in paragraph 6.

7. Deny each and every allegation contained in paragraph 7.

8. Deny each and every allegation contained in paragraph 8.

9. Deny the allegations in paragraph 9, but admit that plaintiff introduced defendant O.S.G. to defendant MITE Corporation and that a purchase agreement between MITE Corporation and O.S.G. was signed for the purchase of Sossner Tap & Tool Company on August 1, 1973 for the sum of TWO MILLION DOLLARS.

10. Deny each and every allegation contained in paragraph 10.

11. Deny each and every allegation contained in paragraph 11.

IN ANSWER TO THE
SECOND CAUSE OF ACTION

12. Repeat, reiterate and reallege the answers provided herein in response to the allegations in paragraphs 1 through 11 of Plaintiff's Amended Complaint.

13. Deny each and every allegation contained in paragraph 13.

14. Deny each and every allegation contained in paragraph 14.

15. Deny each and every allegation contained in paragraph 15.

WHEREFORE, defendants, MITE Corporation and O.S.G. request that the Plaintiff's Amended Complaint be dismissed and that defendants be awarded the costs and disbursements of this action.

Dated: New York, New York
October 30, 1975

CLEARY, GOTTLIEB, STEEN & HAMILTON

By S/ J. W. Lamberton
A Partner
Attorneys for Defendants
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(516) 887-2889

[2]

Appearances:

MESSRS HANOPHY & LEDWITH
Attrrneys for Plaintiff
16 Rocklyn Avenue
Lynbrook, New York

BY: PETER K. LEDWITH, ESQ.
Of Counsel

Attorneys for Defendant O.S.G. Tap and Die, Inc.
MESSRS. CLEARY, GOTTLIEB, STEEN & HAMILTON
One State Street Plaza
New York, New York

BY: JAMES W. LAMBERTON, ESQ.
Of Counsel

MESSRS. MASUDA, FUNAI, EIFERT & MITCHELL
13th and North LaSalle St.
Chicago, Illinois

BY: JAMES R. MITCHELL, ESQ.
Of Counsel

[3]

MR. LEDWITH: Do you accept pretrial memoranda, your Honor?

THE COURT: Yes.

MR. LAMBERTON: Your Honor, may we take care of some housecleaning matters?

THE COURT: Yes.

MR. LAMBERTON: I would like to introduce to the Court Mr. James R. Mitchell of the law firm of Masuda, Funai, Erfert & Mitchell of Chicago, Illinois. And Mr. Mitchell is a member of the Illinois Bar and of the United States District Court for the Northern District of Illinois. I would like to move his admission pursuant to Rule 3 for the purpose of this case.

THE COURT: The motion is granted. Glad to have you here.

MR. MITCHELL: Very nice to be here, your Honor.

MR. LAMBERTON: One other preliminary matter as far as we are concerned, your Honor, the decision of October 7th set down a rule of law which, if this case should reach appeal, we would probably like to have reviewed by the appellate court. In those circumstances we would want to make sure we protect our record, the record upon which your Honor's decision was

made, I believe, hat is basically the deposition of Mr. Brancato and Mr. Zoppelt and Flammia, together with the exhibits. I would like to move that they be designated as part of the record of this trial. Whether or not they are read into the record so that there will be adequate opportunity for the appellant to review --

THE COURT: Well, I think you ought to move to mark in evidence the portion each of you wants as part of the record in the course of the trial. So that ought to protect you without any problem.

MR. LAMBERTON: Would it be possible just to call them Defendant's Exhibits A, B and C, introduced in evidence as they were presented on trial? They were originally filed with the Court. And if it is acceptable to your Honor we can mark them or work it out amongst us.

THE COURT: I have here the deposition of Brancato, the deposition of Mr. Flammia, and the deposition of Mr. Zoppelt.

MR. LAMBERTON: Yes, these are the three.

THE COURT: I have a whole lot of paper clips on them at the moment. I guess it is the result of various work --

MR. LAMBERTON: We will put them in with the

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paper clips and all.

THE COURT: No. I think this was a guide of setting up something that might have some relevance. I am looking for a pretrial order, gentlemen; was one filed in this case?

MR. LAMBERTON: One was filed late Thursday afternoon.

THE COURT: Late Thursday afternoon?

MR. LAMBERTON: Right.

THE COURT: Essentially, the way I thought things over this weekend, in my opinion was that there were essentially four issues here for us to resolve, and this is a non-jury case, and I can't remember why it is non-jury, but it is.

MR. LEDWITH: The Plaintiff forgot to put a jury demand on.

THE COURT: Is that what happened?

MR. LEDWITH: Yes, your Honor.

THE COURT: The first thing is was there a joint venture contract? And if one exists, whether it was breached.

And the second, did Plaintiff perform services at a special interest for the defendant, and in effect, if so, what was the value there?

MR. LEDWITH: Yes.

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THE COURT: That is really all we have before me to determine.

MR. LAMBERTON: Those are the issues.

THE COURT: Well, any other housekeeping details that we can proceed with?

MR. LAMBERTON: Do you want to have those marked in evidence? Are they to be considered marked?

THE COURT: Why don't you mark them into evidence right now with your next successive order of numbers that you will want for this morning.

Do you have any objection?

MR. LEDWITH: Only one clarification, it is not an objection as such.

The Court knows that ordinarily objections to improper questions or inappropriate answers are reserved at the time of trial, and none of that has been done in the transcript. And I am just wondering should we go over this thing and --

THE COURT: Well, I don't think you have to do it now, but some time before the final submissions on this case, if you can either agree, or indicate to me the questions you want objections sustained, and I will make a ruling.

MR. LEDWITH: I intend to read from those

depositions.

THE COURT: They are in evidence, and you can read at will.

MR. LEDWITH: There will be no objections, I am sure, as to the reading. He can object as the questions come along. I am just thinking would it be possible to read what was said --

THE COURT: What I suggest is if you want to put in the whole thing --

MR. LAMBERTON: Your Honor, we would like to designate what we want.

THE COURT: You don't have to read it. You can designate to me what you want to read, such pages that you want to read and that will be fine. Youcan say that you want to read such-and-such before I make a decision.

MR. LAMBERTON: Our basic problem is we were before your Honor without any objection at the time of your decision --

THE COURT: And you want to make sure that you are covered when you take an appeal from this?

MR. LAMBERTON: Yes. I want the appeal court to have the material, too. It seems that some may not have been admissible as far as trial evidence is concerned.

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THE COURT: What order are you marking defendant's exhibits? A is what?

THE CLERK: A is the deposition of Gerald Flammia, that is marked in evidence.

Deposition of Leo Brancato received in evidence as Defendant's Exhibit B.

Deposition of Jack Zoppelt received in evidence as Defendant's Exhibit C.

THE COURT: Now, do you wish to make an opening statement of any kind? Do you feel one is necessary?

MR. LEDWITH: Well, your Honor, do you think it is necessary?

THE COURT: I think I have some familiarity with the case. It is up to you.

MR. LEDWITH: Perhaps just to read my order of proof. Your Honor, as the pretrial order indicates, the issues, and as the Court also indicated to us, the issues for this trial will be whether a joint venture was actually made. The Plaintiff will present certain testimony from depositions indicating that what the parties were discussing or the various discussions and did have some binding authority to make such discussions and to make such commitment as comprised in the essence of the case.

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GUERRINO FLAMMIA, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Did I hear you say, "I do"?

THE WITNESS: I do.

I sort of nodded.

THE COURT: That's what I was afraid of.

He doesn't get anything unless you answer affirmatively.

DIRECT EXAMINATION

BY MR. LEDWITH:

Q Hello, Mr. Flammia.

A Hi.

Q You will tell the truth today, won't you?

A Yes.

Q Mr. Flammia, will you teel the Court your date of birth?

A March 1, 1919.

Q And there came a time, I take it, when you graduated from high school; is that correct?

A Yes.

Q And when was that?

A 1935.

Q All right.

Did you thereafter, some time, become involved in the tap and tool industry?

A Yes, in 1937.

Q All right.

And where did you first become involved in that industry?

A In Mansfield, Massachusetts.

Q And the name of the company?

A Bay State Tap and Die.

Q And what was your position back in 1937 with Bay State?

A I operated a thread burning machine. A machine operator.

Q All right.

How long did you remain with Bay State before you did move somewhere else?

A I left Bay State in 1948.

Q All right.

Let's talk about the period between 1937 and 1943. Okay?

During that period of time, what was your developoment with Bay State Tap?

A Well, I started off as a machine operator, on the day shift, and then I went on to a night shift,

sort of assistant foreman in the thread grinding department.

Q What did your responsibilities as foreman or assistant foreman involve during that period?

A Well, more or less just a -- supervise the -- a bunch of new people that were learning to operate the machines.

I was -- my job until I went back on the day shift, later on --

Q Okay.

Now, in 1943, where did you go?

A I went in the service,

Prior to that, I think I should tell you that I was promoted there from a machine operator, I went to become a time study man and methods man at Bay State.

Q Will you describe what that job entailed?

A Well, that job entailed setting standards for all operations and setting up methods and -- so the fellows would do the work better.

Also, the standards were set up so that the -- to determine their pay. In other words, they were paid a bonus based on what I told them they should do per hour.

Q I see. All right.

Now about after that? What happened?

A After that, I went into the service.

Q And how long were you in the service?

A I was in the service from 1943 to 1945.

Q All right.

1945, you returned to the States?

A I returned to Bay State Tap and Die, in June of 1945 I got a -- I got out of the service a little bit early because of a tragedy that happened in our family.

We had lost a couple of boys and we -- I got out a little early.

Then I went back to Bay State, in charge of a brand new department they had set up called the Experimental Department.

Q What was involved in this department?

A Well, the Experimental Department was a department where we tried to develope new tools and also we had to do jobs or -- when I say "we," it was only me in the department.

I had to do jobs that no one else in the factory could seem to accomplish. They allowed me to try to do it by giving me complete use of the whole factory and any machine we wanted, and we then tried to make some tools that nobody else could make.

It's very, very unusual tools and we didn't have good equipment at the time for it and we made

them.

Q Okay.

Q That was my job.

Q Okay.

Now, there came a time when you left Bay State; is that correct?

A That's right, 1948.

Q 1948?

A Yes.

Q And with whom did you go at that time?

A I came down to New York, to Lynbrook, New York, and went to work for Sossner Tap and Tool Corporation.

Q And who was the boss over at Sossner at that time?

A Mr. Ted Sossner.

Q Okay.

When you first came to Sossner, what position did you assume?

A I was factory superintendent.

Q And what is the -- what does that job entail?

A Well, the factory superintendent -- and I patterned myself afterthe superintendent I had up in

Massachusetts, we ran the whole show.

I keep saying "we." I ran the whole show same as old superintendent did. I was in charge of acquiring equipment, hiring people, firing people and in general, complete charge of the production.

Q Okay.

Now, did there come a time when you purchased an interest in Sossner?

A Yes. The company was struggling along and in 1951 or '52, I'm not sure of the dates, but the company didn't have any money.

We were a very small company. We were doing very little business when we first started. They ran out of cash and since I had a little bit of cash, I loaned the company $5,000 on an interest-free basis, just to keep it going and then when the company got a little bit on its feet, I said: Well, I'd like to take that $5,000 and apply it to purchasing part of the company.

The company was a private company, privately owned, and there was no real stock available.

Finally, Mr. Sossner Sr. donated some of his stock back to the corporation and called it treasury stock and I bought that stock based on book value,

around $7,700.

Q And what interest -- what percentage of interest was that?

A That gave me 10 per cent of the company.

Q Okay.

Now, did you also assume a position of officer at that time?

A Yes. They then made me a vice-president of the company and I stayed as a vice-president for a long, long time.

Q Okay.

Now, did there come a time when there was another change in Sossner's handling?

A Yes. Back in -- well, we -- we sold the company in '67 to the Helicoil Corporation.

Q Helicoil -- did Helicoil buy your shares as well as the Sossner family shares?

A Yes. All the shares.

Actually the reason the company was sold back in '67 was the fact that Mr. Sossner Sr. -- Jr. -- Senier is already dead -- Ted Sossner died after a one year of illness. He was away from the plant for one whole year.

Actually 13 months. And he never -- when

he finally died, his widow who was very upset about everything, decided to sell.

Q Okay.

A At the time the widow controlled 51 per cent of the stock and we did sell the company.

Q Okay.

So it was her decision to sell; is that what you are saying?

A It was her decision to sell.

Q Okay.

A We sold to the Helicoil Corporation. I think I mentioned that before. Right.

Q Okay.

Now, when Helicoil took over, what were your employment arrangements with Sossner?

A Well, when Helicoil took over, before they took over -- oh, with Sossner I was president of the company and I was making forty -- I think $45,000 a year.

When Helicoil took over, they called me up to Danbury and said: Look, they wanted to buy Sosner, but I was -- I had to go with the company or else they wouldn't buy it, and they couldn't pay me $45,000 a year because they thought that was too much, they'd

offer me $35,000 a year. And they gave me a three-year employment contract.

I accepted it because I felt that Helicoil was a good company and I thought I would get advanced reasonably well.

Q Okay.

I forgot to ask you, when did you first become president of Sossner?

A That would have been in February of '67, I imagine. Right after Ted died. He was president.

Q I see. Okay.

You said you had a contract with Helicoil; id that right?

A Yes.

Q For what period of time?

A Three-year contract.

Q Did you remain as president of the corporation?

A Yes, I remained president of the corporation until I resigned, in '72.

Q Okay.

Now, did there come a time when Mite acquired Sossner?

A Yes. Mite acquired Sossner in 1970.

Q You remained as president?

A I remained as president in 1970.

Q Was your salary still $35,000?

A My salary was still $35,000 a year.

Q Now, in 1972, in addition to your salary, did you receive any other income from Sossner?

A Yes. I was put on an incentive system, which was based on -- entirely on sales. Nothing to do with profit. Just on sales. And much against my own better judgment, I accepted it.

The reason I accepted it is that was all I could get. I had told the company that it wasn't good for them and I wrote a letter to Mr. Broncato telling him that it wasn't a good idea because it just didn't make sense from the company standpoint.

You see, I had been through this before with Sossner Tap and Tool. I had an incentive arrangement there which we had to keep changing.

We finally figured it out that in 1966, we had a tremendous growth of business. We grew about 35 per cent, while Ted was sick.

If I had been under my original incentive plan, I think I would have been paid $186,000 or something like that.

Well, I can see that this particular plan didn't have any real merit.

MR. LAMBERTON: Your Honor, I'm sorry, but I don't know what question Mr. Flammia is answering and I realize that the rules of evidence are vastly relaxed but I think that we are wandering rather far afield.

THE COURT: I do, too. I don't think really it is very material.

I haven't made any notes about it but you should answer just the questions your counselor asks and not try to give us a long story, because most of this is irrelevant.

THE WITNESS: Okay.

THE COURT: Don't assume that the rules are relaxed. The rules still apply.

MR. LAMBERTON: Yes, your Honor.

BY MR. LEDWITH:

Q All right.

You did have an incentive plan though in 1974; is that correct?

A Yes.

Q All right.

Were you in fact given any payment as a consequence of that plan?

A Given five thousand four hundred some-odd dollars.

Q That was in addition to your $3,5000 salary; is that correct?

A Correct.

Q All right. Just if I may ask -- withdrawn.

Now, can you, Mr. Flammia, describe to the Court this Sossner Tap and Tool Company itself?

What was its product? What was its size, its reputation, its gross sales, amount of employees; that sort of thing?

Could you do that?

A At what period?

Q In 1972.

A In 1972, we had sales a little over $2,000,000. We had about 99, I think it was, employees. We had a 50,000 square-foot building. We sold all over the United States.

Q What was the product that Sossner did sell?

A We sold taps.

Q What's a tap?

A What is a tap?

A tap is a tool that is used to thread an

internal hole, which has been previously drilled.

Q To make a thread?

A It is used as the -- for tapping a nut, I guess would be the simplest way to put it, and you can introduce a bolt into the nut that you have tapped.

Q All right.

Would it be correct to say then that the tools that you made were used by other people to make the thread inside bolts -- nuts and other things?

A Yes.

Q Okay.

Now, may I ask you, is that a large industry in the United States?

A It's my understanding that the entire business is about a hundred million dollars.

Q In --

A In the U. S.

Q This would be the entire tap business?

A Tap, ground thread taps.

There are different types of taps.

What we are talking about are ground thread taps, about $100,000,000.

Q All right.

Now, was there any kind of a special

process that Sossner had that made its product a more desirable product than what perhaps some other company might have?

Just briefly touch on that, if you would.

A We had developed a surface treatment, which made the tool unique and it enabled us to get into sell to the highly sophisticated tapping jobs.

Q So in 1972, this more or less was the position of Sossner; is that correct?

A I would say, yes.

Q All right.

Now, if you would, could you trace for us the development of Sossner Tap and Die Company from the time that you got into it initially up until 1972, and your contributions to the company?

MR. LAMBERTON: I object, your Honor.

It seems to me this is basically irrelevant to what is at issue in this trial and we've covered his background and the various issues now.

THE COURT: I'll allow a certain amount, Mr. Lamberton. It may be on the fourth question that it has some materiality. I don't know.

But rather than have to bring him back

on that question, I'll allow it.

He's asking for his individual contribution to this company as he saw it during this period of time.

To that extent, I'll allow it. I don't want to repeat what he's already said.

BY MR. LEDWITH:

Q Will you describe first of all what the gross sales of Sossner was, what their equipment was, and how it is developed from there?

A When I first went there in '48, it was a small company doing about $110,000 to $125,000 worth of business a year, with 25 employees, and lots of overtime.

My job was to cut this all down and to make it to be a little bit more profitable operation, and over the period of time we grew each year and kept our expenses down and we were able to enjoyr rather good profits over the years.

Q All right.

A We finally got up to -- in 1967, when the place was sold to Helicoil, we were doing one million nine hundred and some-odd thousand dollars worth of business.

Q All right.

During this time, this special process that you described, did that come into being?

A Yes. It came into being in '51-'52. It was thoroughly, thoroughly checked before we introduced it to the market.

Q Will you tell us what this special process was called, what it was and what your involvement was in developing it?

A The special process was called originally Elekra Process. We used that name for two or three years, while we were getting the tool tested to find out whether or not it really did have bearing and we sent it to -- actually tested it only in one country, in Massachusetts, in Worcester County.

THE COURT: The question was: What did you have to do with it?

THE WITNESS: The question is that I took this particular method and developed it in relationshp to taps.

THE COURT: You did yourself?

THE WITNESS: I did myself, yes.

Q When you say "we," are you talking about you?

A Well, I'm talking about me doing a lot of physical work but naturally with the asisstance of my people, I say "we."

Q Find. Okay.

Now, did there come a time when you developed another unique process for the tap business?

A Yes. I developed a rather unique process and I did this completely on my own.

It was a combination treatment of nitriding and the new name which we had come up with, Elektralube.

Q What was this?

A Well, Nitriding is a surface treatment which is put on with a special type of salt and it makes the tool very, very hard on the surface.

The Elektralube is a type of chrome which gives you lubricity. So the combination of Nitriding which made the tool very hard, and the Elektralube making it very slippery, really become a rather unique item, as far as surface treatments are concerned, and very fiew of the competitors have been able to duplicate it.

Q All right.

Now, who would be one of the purchasers of tapes with this Elektralube on it in 1967, say?

A Well, actually our biggest sales for this type of surface treatment -- together with the special geometry we had developed -- developed for this particular application was the aircraft nut manufacturers on the West Coast.

Q Okay. All right.

What's the special geometry business all about?

A The special geometry is a bunch of controlled dimensions on the tap which are very critical and rather technical to explain but they all have to be held to a very, very close tolerances, requiring specialized equipment, which we had to develop and together with the control geometry and the surface treatment, we really become rather unique and had a very great portion of the California business.

Q California business being what?

A Aircraft nut manufacturer, tapping very exotic tough materials.

Q All right. And in 1972, was Sossner still producing this unique product?

A Yes.

Q And would it be correct to say or fair to say that this process that you described, this combina-

tion of processes with your developments?

A Yes, definitely my development.

Q All right.

In 1972, what was the size of the company and what was the amount of the gross sales?

A The size of the company was $2,000,000, gross sales. We had about a hundred employees.

Q All right.

Now, there did come a time when Mite Corporation purchased Sossner you indicated, is that correct?

A Yes. No. They purchased Helicoil.

Q Okay.

A Who owned Sossner?

Q Okay. So Mite got Sossner, with whom did you deal in Mite Corporation?

A Well, at -- it was group-vice-resident was Brancato, for most of the time and then when Leo was promoted to executive v.p., they assigned a new group-vice-president, namely Dick Swanson, and his main office was in Indiana.

Q Who was the president of Mite Corporation at that time?

A Robert Brinkken.

Q Was there a personnel or domestic --

A Yes, there was a personnel manager named Steward Hamilton and he was in charge of personnel, industrial relations, and he worked out of the New Haven office.

Q Are these the people that you mostly dealt with when discussing Sossner affairs with Mite Corporation?

A Yes.

Q Okay.

Now, let me stop at this point and ask you this:

You just discussed -- can you just discuss briefly the tap industry generally?

You told us what the size was, but what is the nature in terms of profits and competitiveness and that area?

MR. LAMBERTON: I object.

Q This is now in 1972 --

MR. LAMBERTON: I'm sorry. I object, your Honor, unless there is some qualification for this witness to go into the profitability of the entire tape industry.

I don't think that that's --

THE COURT: To the extent of profitability,

I'll sustain the objection.

To the extent of size, he's already said about a hundred million dollars in sales for the entire business, to the extent of number of competitors and how competitive the business was, I'll allow it.

THE WITNESS: Well, the business consists of approximately 25 companies and there are three or four major companies. Maybe five. And there are quite a few smaller companies in the $2,000,000 range. A few smaller.

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(Continued on next page.)

DIRECT EXAMINATION

BY MR. LEDWITH: (Cont'd.)

Q How about the competitiveness of the sales and the margin?

A Actually, the business is very highly competitive and still is. Prices, in my opinion, have always been administered and really never had anything to do with anything except what you can get for the tool. You had to sell your tools based on the prices that the big companies set up. You couldn't charge any more. If anything, you had to charge less and we did have to work within that realm.

Q All right. So in order to make a large profit in terms of money, would you have to manufacture a great volume of products?

A Definitely. I'm of the school that in the standard tap business, that you have to have a great volume of work going through your factory facilities and very efficient automatic equipment to produce it in order to enable your salesmen to sell. Competitively.

Q Okay. Now, in terms of price that you could charge, was Sossner able to get a higher price for its product when customers ordered the Elektralube and the nitriding and all of that?

A Yes.

MR. LAMBERTON: I object, your Honor. The leading now is getting fairly serious.

THE COURT: Yes. Don't lead.

MR. LEDWITH: I'm sorry.

THE COURT: Ask general questions. Let him do the answering.

MR. LEDWITH: Yes, your Honor, of course.

THE COURT: All right.

BY MR. LEDWITH:

Q Will you tell us how the fact of your special processes affected the price of your products?

A Uniquely so. We had a list price which was lower than the industry but at the distributor level, prices were the same. What we added, nitriding and elektrolube or elektrolube alone to a tool, we were able to command the -- let's call it the highest price of anybody in the business. We actually got more for our tools by adding that particular process to it.

Q Okay. Now, in your position as president of Sossner, did there come a time -- now, in 1972 -- that you drew up the forecast or the projected operation plans for Sossner?

A Yes. There was a rule --

THE COURT: I am not quite sure I understand the last statement of yours, when you said by adding these two processes, you'd get a higher price per unit than your competitors or did you get equivalent and the customer got a better price?

THE WITNESS: No, sir. We got actually a higher price than our competitors.

THE COURT: Okay.

THE WITNESS: Because the customer got a better product.

THE COURT: Okay.

BY MR. LEDWITH:

Q I'm sorry. In 1972, did you draw up a forecast or a plan of operating the business for a succeeding year which was delivered to Mite?

A Yes, I did.

Q All right. And in 1972, basically what was your forecast for Sossner?

A The forecast for Sossner, that we were finally going to get in a little bit of a growth period and I thought that we ought to take advantage of it by adding equipment and methods, keep changing -- helping our methods and go out and get some more tap business and I felt that we were going to have two or three or four years

of real prosperity, where prior to that we didn't.

Q And what were the recommendations that you set forth?

A The recommendations were recommendations that I had set forth since 1967, ever since I found out I had to make out forecasts, as to what my plans were and so forth. And we asked for more capital expenditures, more automation and a -- we wanted to acquire other products, other product lines, which were compatible, which we thought would help us in the general market.

Q Okay. Now, just to sort of fill that in, when you say, help you in the general market, what is the connection between getting these new machines and new things and helping you in the general market?

A The general market -- what I meant by the general market, I wanted to acquire other businesses which we could sell as related item, such as a drill or hand bills, which are cutting tools and usually sold by the bigger companies in conjunction with taps. That was one of the things that we tried to get and"we" means I again. I tried to get. And I felt that in order to make the tools -- to increase the volume seemed to me rather easy. For in '71 or was it '72, I don't even remember, my sales manager left and I went out on the road and in six months

we picked up new people, new customers and we just felt that all there was to do was go out there and work and you could get all the business you required. And we wanted -- in order to get the business then we had to make a profit on the business. In order to make a profit we had to have new equipment. Or better equipment. Or rebuilt equipment. And it seemed to me that the Mite Corporation was always a little bit too late getting this thing done or agreeing to it. Just didn't seem to be working out.

Q All right. Now, after you submitted this forecast and projected thing to Mite, were there any discussions with the people at Mite, relative to your recommendations?

A Yes, there were discussions and they just felt that my requests for capiatl expenditures were outlandish and they really had no -- they had no intention of investing a half a million dollars in capital equipment, no matter what protracted period of time I could tell them about.

Q All right. Was there any investment, in fact, made by Mite in capitalizing Sossner over these several years that Mite owned Sossner?

A Oh, yes. They invested money. They built us a brand new building. They allowed us to acquire

certain pieces of equipment and yes, they invested money but I don't think they invested the proper amount.

Q Now, in terms of investments in the machinery, okay, what was the extent to which Mite would invest in the machinery?

A Well, they suggested that they would invest the -- at least the equivalent of the depreciation per year and if you didn't spend the depreciation, bang bang, in that year, it's too bad and too late. You just couldn't -- you couldn't save some of your depreciation from year to year. They didn't like you to do that.

Q I'm not sure I got that straight. What's this depreciation you are talking about?

A The depreciation account which was established on the equipment as it got older. When Helicoil bought the company they valued the equipment at a certain amount of dollars and kept depreciating it over the years. That account was money that's theoretically supposed to be used to replace your old equipment.

Q That's the extent to which Mite would permit you or --

A That's right. That was the -- finally told to me after three or four years. That was never really told to me. In fact of the matter, even though they did

say that, you still had to present a capital expenditure request, on an individual merit and they could refuse it or do anything they wanted with it.

Q All right. Now, did you have a forecast for the prospects of Mite -- I'm sorry. The prospects of Sossner based upon continued capitalization in this manner?

A Yes, I did.

Q And what was your forecast?

A I don't understand your question?

Q I'm sorry. Did you have -- did you see what this trend of investment by Mite in Sossner would do to the development?

A Yes.

Q We had to develop that as part of our plan and if we didn't develop that as part of the plan, they just didn't pay any attention to it at all, at all.

Q Did you have any discussions with Mr. Brancato concerning the extent to which they would go along with your 1972 plan?

A Yes. And we did, yes.

Q What, more or less, was the discussion?

A He said, "Well, I guess you can spend at least your depreciation account."

Q Okay.

A Providing you can justify it.

Q All right. Now, did you foresee -- I am not talking about your report now. I am talking as a businessman. Did you foresee how this trend of capitalization by Mite would affect the future of Sossner?

MR. LAMBERTON: I object, your Honor. Highly speculative.

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THE COURT: Well, no. The question is: Did you communicate any such foreseeability to anyone in Mite or Helicoil?

THE WITNESS: Yes. This is a continuing thing.

THE COURT: If you --

THE WITNESS: Continuing report.

THE COURT: Did you discuss this foreseance with Mr. Brancato?

THE WITNESS: Yes.

THE COURT: I'll allow it.

BY MR. LEDWITH:

Q All right.

Tell the Court what you told Mr. Brancato about the effect of this trend of investment by Mite in Sossner and what -- what the effect would be on Sossner?

A Well, the effect on Sossner would be the --

THE COURT: Bear in mind, it is only against Mite. It is not against the whole industry.

THE WITNESS: The effect would be that we would have better equipment, much more efficient

equipment, which would allow us to product tools more efficiently and naturally cheaper, and which would allow us to make a bigger profit and have a greater amount of tools available.

That was always a problem with us. We didn't have enough inventory and it was indicated to me by the people at Mite that they didn't care to see too much big inventory on the shelves.

They'd like to see it a different way, which is impossible.

BY MR. LEDWITH:

Q Did you express to Mr. Brancato your concern about the future of Mite if they refused to --

MR. LAMBERTON: I object on leading grounds, your Honor.

MR. LEDWITH: Okay.

MR. LAMBERTON: This is leading.

THE COURT: Yes.

Q My question wasn't clear before.

What did you foresee or what did you tell Mr. Brancato about what you foresaw for Sossner if Mite were to continue to not properly invest in accordance with your forecasts?

A I felt that they would become stagnant and sort of just drift along and get nowhere and I thought that where they were preaching about their investment, being so high, is that the only way they were going to recover it is to -- sometimes you had to throw a little more money into the thing and let's go but they never indicated they would.

Q Okay.

Did you tell Mr. Brancato what you thought might ultimately happen to Sossner if they don't get some money into it?

A I think I just answered that by saying I thought they would -- it was naturally -- always the possibility of failure but I think they would have just stayed stagnant and coasted along and maybe something remarkable would happen and they would go.

I don't really know. I can't answer that any better than that.

Q Okay.

In '72, you were making $35,000 plus that bonus; is that right?

A That's right.

Q And did you have any discussions with Mr. Brancato concerning your personal advancement or

your personal security at that time?

A Actually my discussions were held with the new group vice-president first, Mr. Swanson, and also at times with Mr. Hamilton, who visited our plant once in a while, and I suggested that the incentive plan wasn't working out too well.

As far as -- basically again, as far as the company is concerned, it wasn't going to work out that well at all, and I thought that I had been working there for six or seven years, started at $35,000, if I was worth $35,000 in '67, with all the inflation and all the other things, I figured I was worth a little bit more.

And I indicated that I would like to keep my salary -- my salary should keep up with the inflationary spiral, period. That was the extent of my demands as far as salary was concerned.

As far as other things are concerned, it was rather eivdence to me, being close and inside, that the company was more or less for sale and I wanted to know: Well, what was going to happen to me if they did sell the company, and I wanted some sort of a security arrangement of some sort.

Q What did you ask for in connection with

that security arrangement?

A Whatever would make sense. Itwas a negotiable thing. I said I want security in the event the company is sold and I think that you ought to add a little different incentive for better motivation for myself.

I wanted security and notiviation is what I asked for.

Q Did you make any proposals in connection with the security business? What were you asking for?

A I didn't really make any real proposals. I left it opne. I said I'd like to be protected in the event the company is sold.

I am getting a little bit older and I want to know where I'm going. I spent a lot of time here.

3 fols.

(Continued on next page.)

2 Q Now, you indicated that you thought Mite was
3 for sale?
4 A Yes.
5 Q What facts did you know about that that caused
6 you to reach this conclusion?
7 A Well, the obvious latest fact was that when
8 I was talking about security and motivation, their answer
9 was the only way they were goingto solve all their problems
10 was to sell the company to me, and they offered to sell the
11 company to me.
12 Q All right.
13 A They also offered to --
14 Q Who --
15 A -- to have other people look into the company.
16 Back early in '72 they had other people looking.
17 Q Other people being who?
18 A Other people was a company called S.K.F.
19 Manufacturing in -- came out of Sweden. And they came and
20 looked at the company. They knew me personally and did
21 actually -- actually a pro forma balance sheet was submitted
22 to the S.K.F. people, back in '72.
23 Rather evident they wanted to sell the company.
24 Q Okay. You said that someone said to you that
25 in order to get rid of the problems we ought to sell the

company to you?

A That's right.

Q All right. First of all --

A That was their solution.

Q Who was the person who said this first?

A I would say it would be Stuart Hampton said it first, at a luncheon date we had, probably early in -- no. Late in '72. Oh, maybe October, November.

Q May I interrupt? What was Hampton's connection with Mite?

A Hampton is in charge of personnel and industrial relations. He visited all plants to sort of coordinate the personnel setup, as far as my corporation was concerned.

Q What was your disucssion with MR. Hampton? What did the two of you say?

A I was talking about the fact that the company wasn't going anywhere, didn't seem to be going in a direction that I thought it should go! They weren't investing any money. I was rather unhappy.

And Hampton said, "Well, I guess the only solution is for you to buy the company."

And this was -- then evident to me that they -- there must have been quite a bit of discussion about the

sale of this company and let's find out who can buy it.

MR. LAMBERTON: I object.

THE COURT: Strike it out.

Q Okay. Did you have a conversation with any other officer of Mite in connection with this business about your buying Sossner?

A Well, I had a brief discussion with the group vice president Swanson. He, more or less, referred me -- he definitely referred me to Mr. Brancato, as far as the -- tryin-g to buy the business or selling the business and so forth.

Q Can you tell the Court what the discussion was with Swanson or -- can you?

A Well, the discussion was -- with Swanson was where are you going to head this company now that you are the -- or this division now that you are group vice president, and he had some ideas which would be time consuming and we'd have been right where we -- sometimes ended up, too little too late, and I didn't think that we should go all through these gyrations before we invested in equipment.

Q Okay. Was there any discussion with him about your possibly acquiring Sissner?

A No. Everytime we talked about acquiring Sossner, that was always thrown back to Mr. Brancato. He

was the group vice president and Leo was an executive vice president. So he said, "You take that up with Leo."

Q Okay. Did you have a discussion with Mr. Brancato about acquiring the business?

A Yes, I did have a discussion with Mr. Brancato, and, at his advice, he suggested I get ahold of an accountant and a lawyer, and I did.

Q You didn't start off that way with your discussion? You started off saying other things; didn't you?

A Well, I don't really know. We started off by talking about can we get the security and motivation agreement set up so that I wouldn't be concerned about buying the company or anything else.

I wasn't concerned about buying the company until they suggested that as a solution.

Q When was it generally that they made the suggestion?

A Well, the first suggestion, as I say, came back in early -- late '72, with Hampton, and then the suggestion was made in January of '73, after Mr. Swanson told me that he had presented my request to the board of directors, and they happened to be in Florida at the time, and he had presented it and after that they came back with

the idea that maybe I should buy the company and it would solve everybody's problems.

Q Who said this to you, that you should buy the company to solve the problems?

A I would say it was Leo. Maybe he didn't say it that way, but he said it.

Q Okay. Did Mr. Brancato in essence say to you --

MR. LAMBERTON: Objection, your Honor.

MR. LEDWITH: Withdrawn.

THE COURT: Sustained.

Q All right. What in essence was the discussion with Mr. Brancato after he made the statement generally?

A He said that I should get hold of an accountant and Brancato -- I felt was trying to help me make this acquisition, and I listened to him and I paid attention to him because I had a lot of respect for him.

He siad that I should try to acquire the company but before I did that go out and get yourself some advice from a competent accountant and a competent attorney.

And I did. In fact, I used the same accountant and the same attorney that had helped sell the company to Helicoil. So they were rather familiar with the whole business.

And they came up with a number which they suggested that I submit to Leo, and I did, by telephone,

submit a bid of $1,600,000 for the business and he said no, that wasn't a very good idea. It wasn't a very good price and that I should know better, I should know the price of the business. After all, I had all the records in front of me. And I -- I replied by saying, "Well, you told me to get the advice of an accountant and a lawyer and I did and that's what they tell me to do."

I didn't take their opinion, so I -- I then engaged another accountant, who happened to be a combination accountant and lawyer,and had him look over the available figures that I had, and he came up with the identical same number of $1,600,000, and I told that to Leo, too.

And Leo says, "Well, how about the money?" I said, "Well, I understand that these people will help me get the money." He said, "You have to come up with a better rpice." I said, "I can't get it. Nobody will back me up."

And then he said that he, his company, the Mite Corporation, was looking into a way of helping me finance the purchase of that company. They were going to help me purchase the company. That's what he said.

Q What was the figure that they were looking for, do you know?

A They kept looking for two million dollars, right around that number. That was the number that was always

thrown up, two million dollars, two million.

Q After that discussion, what happened to your settlement negotiations -- your purchase negotiations?

A Well, they just fizzled out. Nothing seemed to be happening. Nothing seemed to be happening and I said, well, they probably are hoping I'll go away or something will happen and I said there is no sense of me beating my head against the wall. The hell with it. I didn't bother pushing it anymore at all. It seemed to be fruitless. I resigned.

Q You did resign?

A I resigned because of that indication that they were willing to sell the company to a guy who they obviously knew didn't have the money. They were going to help me get the money. I thought --

MR. LAMBERTON: Your Honor, the question was, "Did you resign," I believe.

THE COURT: All right. Strike it out.

A (Continuing) Yes, I did resign.

MR. LEDWITH: We have in evidence, agreed on, Mr. Flammia's letter of resignation.

THE COURT: All right.

MR. LEDWITH: Shall I read it?

THE COURT: No, just give me the exhibit number.

MR. LEDWITH: Exhibit No. 1.

THE COURT: All right. If you want to read it, you may.

MR. LEDWITH: "To the Mite Corporation, attention of Mr. Blinken:

"Dear Mr. Blinken --" This is dated March 5, 1973.

"For the past several months I have been discussion my personal future and the future plans of the Sossner Tool Division with Mr. Swanson and Mr. Brancato. Discussions relative to future motivation and security plans for me were answered by status quo.

"On suggestion by Mr. Brancato, I have made a tentative offer to acquire the Sossner Division. This offer has been turned down.

"Therefore, due to the inertia evident on both of the above propositions, I hereby tender my resignation as president and general manager of the Sossner Tool Division effective no later than March 31, 1973, signed C. T. Flammia," with a copy to Leo Brancato.

Then, your Honor, Exhibit 2 is a letter from the Mite Corporation dated March 9, addressed to

Mr. Flammia:

"Dear Jerry, at the directors' meeting on March 8th, the Board accepted, with regrets, your resignation as officer of the corporation effective March 31, 1973.

"On behalf of the Board, I wish to note your over twenty years of continuous meritorious service to the corporation. During this period, while serving as president and director of Sossner Tap and Tool Corporation, you rendered significant services, contributing to the growth of the company.

"In recognition of these accomplishments, the Board conveys its gratitude and appreciation.

"By order of the Board of Directors, Sossner Tap and Tool Corporation, signed Marcel J. Lamy, Secretary and Treasurer."

Then Exhbiit 3, your Honor, a notice dated March 13, 1973.

"It is with the sincerest regrets that I announce the resignation of Jerry Flammia as president. As you well know, Jerry has been a vital part of the Sossner operation for many years and he will be greatly missed.

"Jerry has been good enough to stay aboard

until March 31, to assist Mr. Warren Demery, who is assuming the position of general manager.

"We certainly seek the cooperation of all the employees in making the continuity of Sossner operations a success, signed Dick Swanson, Group Vice President."

(continued next page)

MR. LEDWITH: Exhibit No. 4, letter on Sossner letterhead addressed to Sossner Distributors, dated March 14, 1973.

It reads:

"It is with pleasure that we announce the election of Warren J. Demery as President of Sossner Tool, Division of Mite Corporation.

"Mr. Demery replaces G. T. Flammia, who has recently resigned.

"Prior to his appointment, Mr. Demery served as President and General Manager of the Controls Division, Mite Corporation.

"Very truly yours,

"Fred Watkins, Sales Manager."

BY MR. LEDWITH:

Q Now, Mr. Flammia, after you resigned from Sossner, what did you do next?

A After I resigned from Sossner I set up my own company.

Q And what was the name of that company?

A My company, Pioneer Tap and Tool Corporation.

Q And when did you set this company up?

A Late in April, April 20th or something like that.

Q What message had you taken in April to set this

company up?

A Well, actually in April I went to the lawyer and I told him to set up a corporation, and we investigated names and we set up stock, I invested about five or six thousand dollars and more or less checked, and then I said, "Well, I will go out and do something with it," I had a company to work with.

That was about as far as we got in April.

Q Now, in connection with getting Pioneer off the ground, what did you do?

A Well, as I say, I started to make plans to work with a competitor down in Pennsylvania to furnish me what are called blanks and I would finish them up, and the day that I started to go down there I didn't get out of Long Island for three hours because of some rain, so I turned around and went home.

I decided, well, I put it off for probably -- I put it off for the whole summer to take it easy after all of this work for all of these years, and that is what I did.

Q O.K. Now, did you talk to anybody else about a business enterprise during this period of time?

A Yes. Actually in April, right after I left Sossner, I went to a company called Dunbar Development, and I also had a second company called Kelworth Research and I had

been told that they were interested in acquiring companies, small companies, and I presented the story to them about Sossner, told them that I would like to have them back me up because I had the opportunity to buy it.

After studying the figures, they decided that they couldn't take the risk because of the obvious capital expenditures required to really make the business a success.

So that fizzled out.

Then I started up Pioneer Tap because I figured to get anybody to back up the company with the requirements of the great outlay of capital expenditures would be almost impossible. And I said I will go out and start my own company.

Q O.K.

Now, in connection with getting Pioneer going, did you find yourself in Chicago?

A Yes, it occurred to me there was a triple supply convention which is held every year in various cities, I wanted to see some of my old friends, and I figured I would go to Chicago. At the same time I remembered O.S.G. Tap & Die as being a rather reputable product and I said I will go to see them and see whether or not they will furnish me tools. Then I could brand them with my own name, meaning Pioneer, and attack the market, and I made an appointment to see a

Mr. Jack Shufeld who was the Sales Manager for O.S.G.

Q Did you in fact see Mr. Shufeld?

A Yes, I did see Mr. Shufeld on Monday, May 14th.

Q What time was it in the morning when you saw him, roughly?

A Just before lunch. I got to Elmhurst and we had a little discussion, and then we decided to go to lunch. Mr. Shufeld introduced me to Mr. Zoppelt and Mr. Osawa.

Q Now, just before getting to that, first of all, what was Mr. Shufeld's position, do you know?

A He was Sales Manager of O.S.G. Tap & Die.

Q And what was Mr. Zoppelt's position?

A Vice President, Executive Vice President, I understood.

Q How about Mr. Osawa?

A He was President of O.S.G.

Q So the three of you, the four of you had lunch together?

A No, we had lunch with Shufeld, Zoppelt and Reiss, the four of us went to lunch.

Q Were there discussions held?

A We discussed the cutting tool business in general and we -- I think I talked about my ideas of buying O.S.G. taps and adding the electralube treatment, or maybe

buying the tools semi-finished and then putting one or two operations on them so that the fact that they were made in Japan did not have to appear on them. We discussed that at great length at lunch.

Then they told me about another operation that they had called Tap Tool Corporation, which was some sort of a chain of distribution network which they were setting up and they decided that they would like to show me their computer set-up and so forth. So we went back to another office in the same complex of buildings which was evidently the cut tool office. There I was shown the computer and their methods of handling stock and so forth, and --

Q O.K.

Was there any discussion concerning O.S.G.'s operation in the United States?

A Well, they told me they had acquired a company in California which was making special tools, and I am not exactly sure but it seemed to me that somebody said that some day they would have to have the same type of facility on the East Coast, and I then said to Zoppelt, "Would you fellows be interested in buying Sossner, it is for sale?"

And Mr. Zoppelt listened for a moment and said, "Well, I will call."

And he got on the phone and he dialed Mr. Osawa and

told him what it was all about and he said, "Let's go over to his office."

We went across the building to Mr. Osawa's office and we proceeded to discuss this possible deal.

Q Just before we go into discussions in that office, several things:

One, was there any discussion about the cost of manufacturing taps in Japan to be sold in the United States?

A In a general business discussion it was brought out that the costs in Japan were getting rather great due to inflation, inflationary pressures were going on and it was getting almost as cheap to make them here in the United States as it was to buy them back in Japan and have to import them in due to the inflation. I guess we just talked about business in general, not about specifics, at the time, we were just talking, it was just conversation.

Q O.K.

A I felt we were feeling each other --

MR. LAMBERTON: I believe he has adequately answered the question.

THE COURT: Don't add to it, you have answered the question.

Q Was there any further discussion that you recall -- O.K.

I take it ultimately you wound up now in Mr. Osawa's office; is that correct?

A Yes.

Q Who was there besides yourself and Mr. Osawa?

A Just Mr. Osawa, Mr. Zoppelt and myself.

THE COURT: Counselor, I am going to have to interrupt you, I have to go to Manhattan for lunch, so I am going to have to take a little longer lunch than I normally do, I probably will be back by 2:15. I will do my best to get back. This will give you a longer lunch than we normally have and we will pick up at that point.

MR. LAMBERTON: 2:15, your Honor?

THE COURT: 2:15.

(At 12:40 p.m. a luncheon recess was taken until 2:15 p.m.)

apm R3

THE COURT: All right.

MR. LEDWITH: May I recall Mr. Flammia to the stand, your Honor?

THE COURT: Yes.

GUERRINO FLAMMIA, called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: We left off with the meeting of Osawa and Zoppelt and Mr. Flammia in Mr. -- somebody's office.

MR. LEDWITH: Yes, your Honor. Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LEDWITH: (Cont)

Q Mr. Flammia, going back to that afternoon after lunch when you returned to O.S.G.'s premises, you indicated that Mr. Zoppelt called Mr. Osawa and that you went into Mr. Osawa's office; is that correct?

A Correct.

Q Will you tell the Court what was -- who was present in the office at that time?

A Mr. Osawa, Mr. Zoppelt and myself.

Q Okay. Now, will you tell the Court what the discussions were that went on at that time in Mr. Osawa's

2 office?

3 A The acquisition of Sossner's Tap & Tool was

4 being discussed in different ways.

5 Q Okay. Let's just touch on some items. All

6 right.

7 First of all, who brought up the idea that

8 Sossner was available for possible purchase?

9 A I did, in -- back in the other office and that's

10 why I was in Osawa's office. Osawa wanted to discuss it.

11 Q Okay. All right.

12 Now, during your discussions, did you indicate

13 to Mr. Osawa, Mr. Zoppelt, more or less, of what your own

14 personal interest was in such an acquisition?

15 A Well, I believe that we talked about it in the --

16 we talked about it in the direction of well, how do you know

17 it's for sale? I said, "Well, it must be for sale because

18 they've offered it to me."

19 And then I pointed out what I considered were

20 the advantages of O.S.G. acquiring Sossner Tool and the obvious

21 advantages to Sossner Tool to be acquired by a company of the

22 stature of O.S.G.

23 Q Can you stop there for a second?

24 Did you give any specifics about why it would

25 be advantageous for O.S.G. and did you give any specifics why

it would be advantageous to Sossner?

A It would be advantageous to Sossner or to O.S.G. that they would have a domestic source of manufacturing tools larger than the one that I understood they had. They would also have an entree into certain types of markets which they had told me that they had lost particular contacts, and the advantage to Sossner would have been the working relationship with again a relatively well-known worldwide company who had a reputation of having fine equipment and had a fine product and I thought it was a beautiful possible marriage.

Q All right.

Now, did they indicate to you a desire for a company such as Sossner?

THE COURT: Did they what? I'm sorry.

Q I'm sorry. Did they indicate to you that they desired to acquire a company like Sossner?

A They indicated that the timing was a little bit premature. They thought that they would be interested in a company like Sossner in a couple of years. They weren't really ready for it at this time.

And then we discussed the possibilities further and I showed them my forecast, which I had with me, and we talked about that in general and we had a -- they requested copies of the material and they got a little girl there. They

had a pretty little Japanese girl there, and she went to work and made up copies of the forecast and we continued to discuss the possibilities.

Q Okay. Now, what was the next step in the discussions?

A Well, I felt that where we were just getting together and talking about these things and I was -- I was pretty high on the idea when they indicated at least to talk about it and I showed -- tried to show them that I would be able to invest $100,000 in the company, because that's how much faith I had in the possibilities with the proper management techniques, which I felt that they could assist me with, and $100,000 was determined based on the fact that I knew that -- I was positive that the company would be sold for two million dollars, and I figured that was five per cent and I could -- I had over a hundred thousand dollars in rather negotiable bonds and cash that I could lay my hands on.

THE COURT: Wait a minute. Would you read that back, please?

(Record read.)

Q Okay. And were the people from O.S.G. agreeable to your investing this $100,000 in the acquisition?

MR. LAMBERTON: I object, your Honor. That states a legal conclusion, agreeable.

THE COURT: Sustained.

MR. LEDWITH: Withdrawn.

Q What was the reaction of O. --

First of all, did anybody speak in reply to that statement of yours?

A Well, Mr. Zoppelt indicated that that was very good, that I would be willing to invest that kind of money because they felt sure that I would show a lot more diligence and so forth in operating the company and they would have a good working relationship with somebody who was interested in the company, based on their own investment, and he then proceeded to explain that that is the way they operated this cut tool thing, by allowing the managers and - to participate in ownership, and that's the way they operated.

So everybody was pretty well happy about the thing and more or less settled that that -- if the place was for sale, which I wanted to talk about first, that I would be a part-owner, $100,000 investment.

Q Okay. Now, you indicated that Mr. Zoppelt said that you would be a better manager as a result of owning property? What do you mean by that?

A I felt that -- I felt that.

MR. LAMBERTON: Objection.

THE COURT: Wait. Sustained. What they said

to him would be admissible but not what he meant.

Q All right. What was said in connection with your being involved with Sossner?

A Mr. Zoppelt indicated that if I was a part-owner and invested $100,000, with the combination of the O.S.G. facilities in Japan and their ability to furnish tap blanks, which we were in dire need of, and also the ability to furnish automatic equipment, which they were expert at, that we would have a beautiful working relationship, and since more so since I was willing to invest the money. He thought that was real good.

Q Okay. Was there any talk about your actually working for Sossner at that time?

A Oh, yes, definitely. I was going to be the President of the company, the chief operating head. I was going to be the big cheese, and that was it. Definitely.

Q Okay. Now, was this agreement made by one of the people that was in the office that day?

MR. LAMBERTON: I object, your Honor.

THE COURT: Sustained.

MR. LAMBERTON: A legal conclusion.

THE COURT: Sustained in that form.

Q All right. Who said that? Who said that you would be associated with Sossner? Who agreed to it?

A Mr. Zoppelt. Mr. Osawa was in the room also.

Q Okay. Was there any discussion relative to the ability of O.S.G. to make this acquisition? And if so, what was said?

A Well, while the girl was making the copies of this forecast, we kept talking about it and I felt that we had reached a rather important step and I said I think that before we talk about this any more I think I ought to double-check to see if the place is still for sale. So I asked permission to use the phone.

They gave me a little office in the corner and I went over and I called Brancato.

Q Okay. Hold it for a second, if you would.

A Okay.

Q Even before you made this telephone call, was there any discussion between you and Mr. Zoppelt and Mr. Osawa relative to O.S.G.'s ability to purchase Sossner, should it be for sale?

A Yes. They said there was no problem for money and I think we even talked about the rates of exchange, and so forth, that they had -- they had plenty of financial backing, again because O.S.G. Tap & Die was the biggest tap company in the world.

(continued next page)

BY MR. LEDWITH:

Q And was there any discussion between you and Mr. Zoppelt about working with Sossner or developing Sossner, and if so, what was said?

A Well, I was supposed to be the President of the company and to operate the thing to the best of my ability, under their direction, under their direction because they basically held the financial strings where they controlled ninety-five per cent.

Q Was there any talk about expending money as it applied to Sossner with respect to their machinery, production, and if so, what was said?

A Actually, it was general that we touched on on the first day because we really didn't have time to digest -- they didn't have the time to digest the business forecast, and that is why I left copies there for them to study, they said they wanted to study the forecast, and it was after that I came back and told them what Sossner said, what Leo had said, they said that they still wanted to study the forecast and that they would be in touch with me the next day, and they said --

Q Was all of this discussion completed before you went to the telephone to talk to Mr. Brancato?

A I would say the discussion was completed in my

opinion, again the way I felt, I felt that they were sincere and --

MR. LAMBERTON: Objection, your Honor. He has answered the question.

THE COURT: Yes.

Everything after where you got to the point that they were sincere is stricken out.

BY MR. LEDWITH:

Q Were these agreements made before you made a telephone call?

MR. LAMBERTON: I object, your Honor.

THE COURT: As to the word "agreements," sustained.

MR. LEDWITH: Withdrawn. Withdrawn.

Q Did all of this conversation take place before you made the telephone call to Mr. Brancato?

A I would say 95 per cent of the conversation was completed before I telephoned Mr. Brancato.

THE COURT: Is that 95 per cent of the conversation that you related or all of the conversation?

THE WITNESS: All of the conversation was related and it was completed.

Q Just to clear the record, what five per cent was not discussed then and there?

A Well, really just sweepings, I mean what was left off, but the deal as far as I was concerned was made.

MR. LAMBERTON: I object again. He said there were sweepings and nothing was left over and that seems to answer the question.

THE COURT: He said all the conversation that he had related so far had occurred before he went to the telephone, and that is the important thing.

Is that right?

THE WITNESS: That is right.

THE COURT: Leave it at that.

BY MR. LEDWITH:

Q Did you then telephone Mr. Brancato?

A Yes, I did telephone Mr. Brancato.

Q What was the purpose of that telephone call?

A It was to be absolutely sure that the place was still for sale, Sossner.

Q Will you tell the Court what the contents of your discussion with Mr. Brancato was?

A Mr. Brancato said that --

MR. LAMBERTON: Objection, your Honor, we haven't discovered if he reached Mr. Brancato.

THE COURT: That almost goes without saying.

Did you get to Mr. Brancato?

THE WITNESS: Yes, I did get to Mr. Brancato.

THE COURT: On the telephone?

THE WITNESS: On the telephone.

THE COURT: Long distance?

THE WITNESS: From the offices of O.S.G. Tap & Tie Company, yes.

THE COURT: Okay.

A And I spoke to Mr. Brancato and told him that I had lined up a possible buyer and would he be interested in further discussions.

Q A possible buyer for what?

A For the Sossner Tool Division.

Q Can you tell the Court the day this discussion was had on the phone and the approximate hour in Chicago?

A It was held on the 14th of May, at about 4:15, between four and five o'clock in the afternoon, Chicago time.

THE COURT: Okay. He said that he lined up a possible buyer, and I would be interested in pursuing it.

Now, what did he say?

THE WITNESS: He said he would like to mull it over, that he was relatively satisfied with the present management and he would like to give present management team a chance to prove what they could do, and that is

A Yes, it is.

MR. LEDWITH: I offer it in evidence.

MR. LAMBERTON: May I ask one or two questions on voir dire of this, your Honor?

THE COURT: Yes, you may, Mr. Lamberton.

VOIR DIRE EXAMINATION

BY MR. LAMBERTON:

Q Mr. Flammia, as I understand your testimony, you delivered this to O.S.G. on May 14, 1973?

A Right.

Q You were attending a convention in Chicago at that time, I believe?

A Yes.

Q You went to O.S.G. to see about possible supplies of unfinished taps, did you?

A Yes.

Q And you were carrying with you a fiscal forecast for the 1973-74 year of Sossner at that time?

A Yes.

Q And this had been previously prepared?

A For Mite.

Q When was that, when was that done?

A I am pretty sure it had to be prepared by January 1, 1973.

Q You were in the habit of carrying this around the country with you at conventions?

A Well, I only went to one convention.

Q And you carried this with you?

A Yes.

Q And you delivered it to Sossner -- I am sorry, you delivered it to O.S.G.?

A In relation to our conversation, yes.

Q Isn't it a fact that you delivered it on a later date to them?

A No.

Q And not on May 14th?

A On May 14, 1973.

MR. LAMBERTON: No objection, your Honor.

THE COURT: It will be received.

THE CLERK: One booklet received in evidence as Plaintiff's Exhibit 20.

(So marked.)

BY MR. LEDWITH:

Q Incidentally, Mr. Flammia, that forecast was presented to Mr. Osawa and Mr. Zoppelt before your telephone conversation with Mr. Brancato?

A Yes.

Q And were photocopies made before your telephone

conversation with Mr. Brancato?

A They were probably completed by then, yes.

Q Incidentally, I forgot to ask you, but before making this call to Mr. Brancato, did you have any discussions with Mr. Zoppelt concerning your own possible salary should you go to Sossner in this deal?

A Yes, we discussed the salary and Mr. Zoppelt indicated that I would be paid as much as I did before, at least.

Q And was there any further edification at that time?

A Yes, he said if the deal were consummated he could envision a great deal of compensation forthcoming.

Q Had you indicated to him and to Mr. Osawa what your income was in 1972, that is prior to making this statement?

A I am not sure of that. I probably did tell him I was making thirty-five to forty thousand dollars a year, yes, sir.

Q Did he indicate to you what your salary could be once you became associated with Sossner -- with O.S.G.?

A Oh, yes.

MR. LAMBERTON: Your Honor, is it "would" or "could be"?

THE COURT: I am not clear, "would" or "could."

BY MR. LEDWITH:

Q Tell us precisely what Mr. Zoppelt said to you about your salary would be and whatever else he said?

A Mr. Zoppelt said that my salary would be at least as much as I had earned with Sossner Tool and that he could envision a sharing of profits and other fringe benefits which would make my salary rather beautiful; in fact, the number that was tossed around was $100,000 gross salary a year.

Q Okay.

A Potential.

Q Okay --

MR. LAMBERTON: I am sorry, I missed the last.

THE WITNESS: Potential $100,000.

THE COURT: The number tossed around was $100,000 a year potential.

MR. LAMBERTON: Potential, thank you.

Q Now, you indicated after you spoke to Mr. Brancato and you came back to Mr. Osawa and Mr. Zoppelt and you told them what the two of you had said --

A Right.

(continued next page)

Q Well, what happened after that?

A Well, I think we talked about it in general and they said they wanted to study the business forecast which I had left, which they had made copies of, and I went back to the convention.

And that was it for the evening.

Q All right.

Now did something happen the next day, on May 15th?

A Yes, on the 15th of May I received a telephone call at the hotel from either Mr. Zoppelt or Mr. Zoppelt's secretary or Mr. Osawa, and they wanted to know, they wanted to let me know that I should proceed to negotiate with Mite Corporation.

Q And then what happened?

A I asked them, I said to them on the phone, I said I don't think that Mr. Brancato is going to pay much attention to what I say unless he has some idea whom I am going to be talking with, so is it all right if I mention O.S.G., and they said, yes, you are hereby authorized to mention O.S.G. Tap and Die.

Now I don't think I called Leo that day, I think I called him the next day --

Q That would be May 16th?

A Yes, we just about left it in suspension, and I called Leo and told him what was going on.

Q What did you tell to Mr Brancato and what did he say to you?

A He still said he was mulling it over and he would mull it over over the weekend and I would probably hear from him, and that was the extent of that conversation.

Q Did he give you a date that he -- withdrawn.

Okay, after you had this discussion with him, what happened next, what did you do?

A Well, I went on to Detroit the following day and I don't think I spoke to Osawa or Zoppelt that day anymore, I then went on to Detroit thinking about machinery, and so on, and then I went back home, and on thinking what had gone on I decided to write two letters, and I wrote a letter to Mr. Brancato and a letter to Mr. Osawa more or less repeating what we have already said.

MR. LEDWITH: Your Honor, might I read into evidence Plaintiff's Exhibits 5 and 6 which have already been marked?

THE COURT: Yes -- you are not reading them for my benefit, I know what they say.

MR. LEDWITH: All right, to save time I will skip reading them.

THE COURT: As you will recall I referred to them in my opinion.

MR. LEDWITH: That is right.

Q Now, after having sent these two letters in the mail, did you then hear from either O.S.G. or the people from Mite?

A No, we didn't hear anything at all. I may have phoned Osawa or Mr. Zoppelt to let them know, you know, that I hadn't heard from Leo, but I don't even think I did that. I was more or less waiting for Leo to come back to me, and I think I indicated in my letter that if I didn't hear from him in a certain length of time that I would follow it up.

Q Did there come a time when Mr. Brancato did in fact get in touch with you?

A Yes. Even after I had written the letters it was a surprise to me, to be honest, to get a phone call from Mr. Brancato. I think it was on the 24th of May and it asked me for the names and addresses or the name and address of O.S.G. Tap and Die because he wanted to get in touch with them.

Q All right.

And did you in fact give him that information?

A Yes, I gave him the information that he

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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G. T. FLAMMIA, :

Plaintiff-Appellee, : Index No. 76-7408

-against- : AFFIDAVIT OF PERSONAL SERVICE

OSG TAP AND DIE, INC., :

Defendant-Appellant. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARTHUR SELIGMAN, being duly sworn, deposes and says that he is over the age of eighteen years, is a Clerk in the employ of Cleary, Gottlieb, Steen & Hamilton and is not a party to this action.

That on the 13th day of October, 1976, he served upon Hanophy & Ledwith, Esqs., the attorneys for plaintiff-appellee two copies of a 3-volume joint appendix and two copies of defendant-appellant's brief by delivering them to and leaving them with a person then in charge of the office of the attorneys for plaintiff-appellee, located at 16 Rocklyn Avenue, Lynbrook, New York 11563.

Arthur Seligman
Arthur Seligman

Sworn to before me this 13th
day of October, 1976.

William A. Loeb
Notary Public

WILLIAM A. LOEB
Notary Public, State of New York
No. 31-4630452
Qualified in New York County
Commission Expires March 30, 1978

Copy Rec'd
P Ledsmith Sr.